

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES**

BY AND BETWEEN

CITY OF SANTA CLARA, CALIFORNIA

AND

ALLIED WASTE SERVICES OF NORTH AMERICA, LLC

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
ALLIED WASTE SERVICES OF NORTH AMERICA, LLC**

This Non-Exclusive Franchise Agreement ("Agreement") is made and entered into this day of _____, 2008 ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City"), and Allied Waste Services of North America, LLC, a Delaware Corporation, with its principal place of business located at 1601 Dixon Landing Road, Building 1, Milpitas, CA 95035 ("Contractor"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement".

RECITALS

Whereas:

- A. This Agreement is entered into pursuant to Ordinance 1709 of the City of Santa Clara, entitled, "An Ordinance of the City of Santa Clara, California Repealing the Existing Chapter 13, Article III of 'The Code of the City of Santa Clara, California' in its entirety and adopting a new Chapter 13, Article III Pertaining to the 'Accumulation, Transportation and Disposal of Waste Matter'" passed and finally adopted by the City Council of the City of Santa Clara, California on the 6th day of January, 1998;
- B. All the provisions of Ordinance No. 1709, and the provisions of any other applicable City ordinance, are hereby referred to and made a part of this Agreement, as if the same were herein specifically set forth. Contractor agrees to faithfully perform each and every provision, term, condition, and covenant contained in this Agreement, addition to each and every provision, term, condition, and act of said Ordinance(s);
- C. Contractor is willing, able, and competent to provide collection and hauling services for collection of recyclable materials and/or the disposal of refuse generated from industrially zoned establishments in the City of Santa Clara; and
- D. It is deemed to be to the mutual advantage of City and the Contractor to provide these services for the industrial community, and to promote the health, safety, and welfare of all City residents.

In consideration of the above recitals and the following mutual covenants, agreements and obligations of the Parties, the City, and Contractor agree as follows:

AGREEMENT PROVISIONS AGREEMENT PROVISIONS

1. DEFINITION OF TERMS.

Wherever used in this Agreement, the following terms shall have the following meanings. The singular of any definition shall include the plural and the plural shall include the singular.

a. Commercial

The term "commercial" shall mean the designated zoning for commercial, professional office (OA), or general office (OG) development as shown on the official Zoning Map of the City of Santa Clara.

b. Industrial

The term "industrial" shall mean a parcel of real property designated as being located in a industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara.

c. Industrial Refuse

The term "industrial refuse" shall mean all classes of solid wastes generated in the industrial zoning districts of City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, and including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

d. Institutional

The term "institutional" shall mean the designated zoning for public (B) or quasi-public (B) development as shown on the official Zoning Map of the City of Santa Clara.

e. Planned Development

The term "planned development" shall mean designated zoning for planned developments (PD) as shown on the official Zoning Map of the City of Santa Clara. The determination of whether specific properties with PD Zoning shall be considered industrial or other type zoning shall be determined solely by the Director of Planning and Inspection.

f. Recoverable Material

The term "recoverable material" shall mean all materials that have the potential to be recovered from garbage containers and recycled. This material shall include: wood waste, white paper, news paper, mixed paper, cardboard, green waste, concrete, and scrap metals.

g. Recyclable Material

The term "recyclable material" shall mean newspapers, cardboard, clean cans, bottles, glass, scrap metal, and high grade paper, including Recoverable Material not contaminated by garbage or other waste materials.

h. Source Separated Recyclables

The term "source separated recyclables" shall mean recyclable material that is separated by the customer and placed into containers designated for recycling specific types of recoverable materials. The containers must have less than five percent (5%) contamination to be considered source separated and qualify for the reduced franchise fee.

i. Refuse

All classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

j. Material Recovery Facility (MRF)

The term "material recovery facility" shall mean a facility that processes refuse or mixed debris for the purpose of removing recoverable materials for recycling.

k. Residential

The term "residential" shall mean the designated zoning for residential (R) development as shown on the official Zoning Map of the City of Santa Clara, or other property used for residential purposes, regardless of its zoning designation.

l. Quarter

The term "quarter" shall mean a three (3) month period, or portion thereof, ending the last day of the following months: March, June, September, and December.

m. Waste Audit

The term "waste audit" shall mean Contractor periodically supplied certified report of amounts of recoverable material and garbage for specific customers which may be required by the City per terms and conditions described herein.

2. TERM OF AGREEMENT.

Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate at the end of day on December 31, 2011.

3. CONTRACTOR'S OBLIGATIONS AND HOURS OF OPERATION.

a. Obligation

City hereby grants to Contractor a nonexclusive right to provide the services required, and to furnish whatever labor, equipment, materials, and supplies which may be necessary, for the

purpose of collecting and picking up recyclable materials and industrial refuse, and to remove and transport said material to its destination from industrial zones in the City of Santa Clara for a period of time commencing on the Effective Date, subject to the termination provisions in Paragraph 13. Contractor agrees, in accordance with the covenants and agreements contained in this Agreement, to provide said services.

b. Restrictions

Contractor shall not charge for the collection and disposal of refuse or recyclables in commercial, institutional, and residential zoned property in the City unless authorized by separate franchise agreement with the City. Contractor may collect from these areas recoverable and recyclable material at no charge or fee to customer, including any hauling, bin rental, equipment rental, management, or similar service charge or fees. Any recoverable and recyclable material setout for collection must be setout in separately marked containers, and not contaminated by garbage.

c. Building Construction Exception

Exceptions in commercial, institutional, and residential zoned properties will be allowed for Contractor who has declared to City their primary business activity is building construction, and/or building demolition. Contractor must provide City with documentation that demonstrates that construction site clean-up services are being performed, with the cost of debris hauling and recycling itemized out for reporting purposes. In order to qualify for this exception, the construction contractor must utilize its own personnel to load the recoverable material into containers. This exemption does not apply for refuse. Contractor is required to report the amount of recyclable materials collected and pay franchise fees on the debris hauling/recycling portion of the charge to the customer.

d. Hours of Operation

All collections shall be made as quietly as possible, without unnecessary noise, disturbance, or commotion. Collections from any premises shall not be made prior to 4:00 a.m., and for areas that abut residential areas, collections shall not commence prior to 7:00 a.m.

4. NON-EXCLUSIVE FRANCHISE FEE PAYMENTS TO CITY.

Contractor shall pay to City a franchise fee ("Non-exclusive Franchise Fee") for the privilege of engaging in the business of collecting, hauling, and transporting recyclable material and industrial refuse to its destination. This Non-exclusive Franchise Fee shall be sixteen percent (16%) of the total gross billings for refuse that is not processed through a material recovery facility (MRF) that diverts at least thirty percent (30%), or source separated recyclable containers that have contamination levels greater than five percent (5%); ten percent (10%) of the total gross billings for refuse that is taken to a MRF that diverts at least thirty percent (30%); and three percent (3%) of the total gross billings for service of source separated recyclables with a contamination rate of less than five percent (5%). Bin and equipment rental charges are to be included in the gross billings for each industrial customer.

5. QUARTERLY AND ANNUAL REPORTING TO CITY.

Contractor shall file with the City's Director of Finance and forward a copy to the City's Director of Streets and Automotive Services, for each quarter's reporting period (or portion thereof), a written statement certifying the total gross billings for refuse and recycling issued during the period and total number of customers for which such statement is rendered and filed. Said statement shall be due within thirty (30) calendar days following the end of each quarter. Each statement shall be executed and submitted on a report form included herein as Exhibit "B" entitled "CERTIFICATE OF GROSS BILLINGS NON EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA, CALIFORNIA)".

Each certifying written statement filed with the City's Director of Finance shall be accompanied by the Non-exclusive Franchise Fee payment equal to the appropriate percentage of the gross billings certified. Non-exclusive Franchise Fee payments shall be delinquent on the thirty-first (31st) calendar day following the completion of the reporting period. Delinquent Non-exclusive Franchise Fee payments shall bear interest, commencing from the date of delinquency, at the rate of one and one quarter percent (1.25%) per month, or part thereof, simple interest in addition to penalties described in Section 21, herein. Failure to report and/or pay in a timely manner for more than one quarter, or failure to pay constitutes cause for termination of this Agreement per terms of Section 15b, of this Agreement.

A Contractor with a total reportable gross billings in excess of one hundred thousand (\$100,000) dollars per year shall submit annually, a report and an opinion by an independent certified public accountant that the Contractor's records were examined and the quarterly reports were a fair and accurate representation of the gross billings and Non-exclusive Franchise Fees owed the City. Said report shall be filed within one hundred (100) days after the end of the Contractor's fiscal year.

A Contractor providing recycling services without charge or compensation or for which customers are paid for materials must submit a quarterly report as described in Exhibit "B", listing the volume or tons diverted from customers within the City and certifying that no revenues were collected for recycling service or bin rental.

6. RECORDS.

Contractor shall keep and maintain full and complete records in Contractor's local office showing all City industrial refuse hauling and recyclable material collection business transacted. Such records shall be available in Contractor's offices for audit and inspection at any and all reasonable times upon request or demand of the City Manager or her/his designee. The records shall be maintained on the form entitled "RECORDS OF GROSS BILLINGS AND VOLUMES OF INDUSTRIAL REFUSE AND RECYCLABLE MATERIALS" and attached as Exhibit "A". A similar accounting format which provides the same type of information and summaries may be used if approved by the City Manager or her/his designee. The records must be kept on file for a period of three (3) years following the expiration or termination of this Agreement.

Failure to maintain adequate records and keep them on file for a period of three (3) years

following expiration or termination of this Agreement, whichever occurs first, shall be cause for the City to conduct, or hire an independent accounting firm to conduct, an extensive audit of Contractor's available records and Contractor's industrial customers' records to determine if additional Non-exclusive Franchise Fee payments are due to City. The costs of this audit shall be borne by Contractor. Prior to conducting this audit, City shall give Contractor written notice of deficiencies in record keeping and Contractor shall have thirty (30) calendar days to cure the default.

If the default is not cured within the time allotted, City shall have the right to conduct said audit and the cost of said audit, including additional Non-exclusive Franchise Fee payments plus interest at the rate of one and one quarter percent (1.25%) per month simple interest, shall be paid to City by Contractor within fifteen (15) days of receipt of audit report and billing by Contractor. Failure to maintain adequate records as required constitutes cause for termination of this Agreement, per terms of Section 15b, of this Agreement.

7. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that at all times herein mentioned, Contractor shall be deemed to be an independent contractor and that all work done hereunder shall be done and performed to the satisfaction of the City Manager who shall from time to time have the right, as circumstances require, to issue reasonable orders, directions, and instructions to Contractor having for their purpose the attainment of the results herein sought to be accomplished; provided however, that the means whereby such results are to be accomplished shall at all times be under the control of Contractor.

It is further agreed that neither Contractor, nor employee(s) of Contractor shall be deemed to be an agent or employee of City. Contractor, its agents and servants shall not hold themselves out to be the agents or employees of City in any manner whatsoever. It is further provided that Contractor shall not use the firm name containing the words "City" or "Santa Clara" or other words implying municipal ownership without approval of City Council of City.

8. COLLECTION EQUIPMENT - DESCRIPTION AND MARKING.

Contractor undertakes and agrees to carry out and perform the obligations of this Agreement in a sanitary, good, and workmanlike manner. All industrial refuse, and recyclable material collected by Contractor shall be transported in modern collection equipment, so constructed and so loaded that there will not be any leakage or dropping of industrial refuse or recyclable material therefrom. Said industrial refuse, when placed in any such vehicle and during its passage to its destination, shall be suitably enclosed so as to prevent spillage. Collection vehicles shall be uniformly painted and numbered, and shall have Contractor's name and the vehicle number painted in contrasting colors on each side and on the rear of the vehicle. Contractor's colors and color patterns on vehicles and bins shall be approved by City and be sufficiently different to be distinguishable from other non-exclusive franchise industrial refuse and recycling collection contractors. Collection vehicles shall be repainted at least once every forty-two (42) months, with touch-ups in the interim as required for aesthetics.

Contractor may furnish City-approved, detachable metal bins or containers to customers. In such event, Contractor shall be responsible for the general repair and upkeep of the bins or containers. Contractor shall repair, repaint or touch-up such bins or containers as required, but not less than

once every two years, and shall maintain such bins or containers in a sanitary non-leaking condition. Contractor's firm name and telephone number shall be indicated clearly on the surface of the bin or container. Bins designated for Recyclable Materials shall be additionally designated with the type of material to be placed therein.

9. OBEYANCE OF LAWS.

Contractor agrees to handle and transport to its destination all collected refuse and recyclable material from industrial establishments and to perform all of the services as required by the provisions of this Agreement, in a careful manner, and in accordance with all laws, ordinances and regulations of the United States, State of California, County of Santa Clara, and City of Santa Clara.

10. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit "C", Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the performance of Franchise Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit "C".

11. ASSIGNMENT.

This Agreement shall not be sublet or assigned, wholly or in part by operation of law or otherwise, without the written approval of the City Council of City.

12. OWNERSHIP AND DISPOSAL OF INDUSTRIAL WASTE AND REFUSE.

All industrial refuse and recyclable material collected by Contractor shall become the property of Contractor immediately upon the collection thereof, and shall immediately be removed and conveyed to its destination. Nothing in this Agreement shall be construed to grant permission to Contractor to dispose of collected industrial refuse at City's designated landfill site at City's preferred disposal rate for exclusive franchise refuse. Capacity at City's designated landfill site has been arranged, but not the disposal rate. Refuse collected by Contractor shall be transported to a legally permitted materials recovery facility, or a legally permitted disposal site outside the corporate limits of City.

13. SANTA CLARA COUNTY AB 939 IMPLEMENTATION FEES.

Contractor is responsible for paying all applicable Countywide AB 939 Implementation Fees on refuse collected in City, even if the refuse is transported to a disposal facility outside of Santa Clara County where the fee is not collected at the gate.

14. TERMINATION OF AGREEMENT.

This Agreement may be terminated under the following circumstances:

a. Contractual Termination Notice

Contractor is aware of the provisions in the California Public Resources Code. Subject to the provisions of Article 3 (Section 49520 et seq.), Chapter 6, Part 8, Division 30 (Entitled "Waste Management", Section 40000 et seq.) of the California Public Resources Code, and subject to earlier termination for cause as set forth in subparagraph b, below, this Agreement shall terminate as of December 31, 2011.

b. Termination for Cause

Notwithstanding the above, if at any time, in the opinion of the City Council, Contractor has failed to adequately perform the terms of this Agreement, City shall have the right and power to terminate this Agreement for cause pursuant to the provisions of Article VI (commencing with subsection 2-73) of Chapter 2 of "The Code of the City of Santa Clara, California" and said termination shall be treated procedurally as if it were a license revocation procedure). In determination of the question whether there has been any such noncompliance with this Agreement as to warrant the termination thereof, the decision of the City Council of the City of Santa Clara shall be final and binding.

c. Contractor Termination Without Cause

Contractor may terminate this Agreement without cause by giving City written notice. Within thirty (30) calendar days of written notice, Contractor shall file a certificate, attached as Exhibit "B", and pay all outstanding Non-exclusive Franchise Fee payments as required under Section 4 herein.

15. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by City and Contractor.

16. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability or perceived disability, religion, ethnic background, or marital status, in violation of state or federal law.

17. HOLD HARMLESS/INDEMNIFICATION.

Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, or liability of any nature, including wrongful death, caused by or arising out of Contractor's, its officers, agents or employees negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on Contractor with respect to or in any way connected with the Services performed by Contractor under this Agreement, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom.

18. SERVICE OF NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Office of the City Clerk
Attn: Richard J. Mauck,
Director of Streets and Automotive Services
1500 Warburton Avenue
Santa Clara, California 95050
Phone Number: (408) 615-2051
Or by facsimile at: (408) 244-8071

And to Contractor addressed as follows:

Allied Waste Services of North America, LLC
Attn: Gil Cheso, General Manager
1601 Dixon Landing Road, Building 1
Milpitas, CA 95035
Phone Number: 408-432-1234
or by facsimile at 408-635-1486

19. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

20. NOTICE OF FAILURE TO PERFORM, PENALTIES AND REMEDIES.

a. Notice of Failure to Perform

In addition to any other penalties or remedies available to City or provided under this Agreement or by law, City will give written notice to Contractor for failure to perform any other services and terms of this Agreement. In the notice, City shall also identify any allowable Contractor period of compliance.

b. Remedies

Contractor shall respond to City's written notice of failure to perform and provide written notice to City, within five (5) working days, on remedies, actions, corrections, and if necessary, a schedule of compliance.

c. Penalties for Failure to Perform

Contractor, upon failure to perform the following described terms and conditions of this agreement, shall be fined through the accounts receivable or administrative citation process, the following amounts:

1. Early collection of industrial areas abutting residential areas (Section 3c.)-
\$200.00 per occurrence;

2. Failure to make Non-Exclusive Franchise Fee payment within prescribed period (Section 6) - \$50.00 per day late first three calendar days; thereafter \$100.00 per day late, or one and one-quarter (1 1/4%) percent per month or part thereof of fee due whichever is greater.
3. Failure to submit fully completed quarterly report with payment, (Section 6) - \$50.00 per day late.
4. Failure to renew insurance, and submit Certificate of Insurance prior to expiration date (Section 11) - \$100.00 per day late.
5. Failure to maintain contactor name and phone number on containers - \$100.00 per occurrence.
6. Set out and collection of refuse container (cans, carts, bins, or debris boxes) in the City of Santa Clara outside of the area permitted by this Agreement (Section 3b) - The penalties annually shall be as follows;
 - A) First Violation - \$500.00 per occurrence per collection.
 - B) Second Violation Within a One-Year Period - \$750.00 per occurrence per collection.
 - C) Third Violation Within a One-Year Period - \$1,000.00 per occurrence per collection.
 - D) Fourth Violation Within a One-Year Period - \$1,000.00 per occurrence per collection and cause for Immediate Termination (per Section 14b) of Contractor's Agreement with City.

7. Unauthorized Bins, Boxes, or Containers

The City shall notify, in writing, any Contractor who violates Section 20.c(6) that the prompt and permanent removal of such Bin, Box, or Container from the place or premises is required. The City shall deliver such written notice by posting a copy of the notice prominently upon the Bin, Box, or Container. If the Bin, Box, or Container is identified with the name and telephone number of the solid waste Contractor servicing it, as is required in Section 9, the City shall endeavor to contact the Contractor by telephone or FAX. Failure to notify the Contractor by telephone or Fax shall not make the notice invalid.

The City may impound or cause to be impounded any such Bin, Box, or Container if the item is not permanently removed from the place or premises within the time set forth in the notice, which shall be not less than twenty-four (24) hours after posting of the notice, or not less than noon of the next business day after telephone or FAX notification, if any.

Any Contractor who violates Section 21.c(6) shall be liable to the City for all fines and charges levied in connection with the collection, transportation, storage, and handling of such Bin, Box, or Container by the City. Charges for the impounding and subsequent release of any unauthorized Bin, Box, or Container shall be \$200 plus \$50 per day storage cost. The Bin, Box, or Container impounded by the City shall be retrieved by the Contractor or his or her representative immediately after all applicable fines and charges have been paid. The City Manager may delegate to an authorized contractor the authority to impound unauthorized Bins, Boxes, and Containers.

Contractor will be required to refund any and all fees paid by a customer for the placement of unauthorized Bins, Boxes, and Containers.

8. Failure of Contractor to maintain Contractor's vehicles, bins, or containers in prescribed condition (Section 8) - \$25.00 per each day late based upon an agreed compliance schedule.
9. Failure to submit, if required, annual independent certified public accountant report and opinion Contractor's records and quarterly reports were fair and accurate (Section 6) - \$50.00 per each day late first month; \$100.00 per each day late thereafter.
10. Failure to submit any required Waste Audit reports (Exhibit F) entitled "Waste Audit Reporting Requirements": \$50 per each day late first 30 days; \$100 per day 30-60 days late; \$150 per day 60-90 days late. Immediate termination of Contract if report is over 90 days late. City shall provide written notice to Contractor after each thirty (30) day late period extended beyond the due date.

21. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- a. read the attached Exhibit "D", entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- b. execute the affidavit attached as Exhibit "E", entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

22. DISPOSAL REPORTING.

Contractor's quarterly reporting to City required in Section 6 shall correspond to quantities reported as required per State of California Regulatory Code Title 14, Division 7, Article 9.2, Disposal Reporting System. Any discrepancies noted by City in writing to Contractor shall be explained and documentation provided in a timely manner. Contractor shall provide quarterly report to City of all refuse and recoverable material taken to, and City material/refuse removed from, a Transfer Station (s) or processing center (s).

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager

ATTEST:

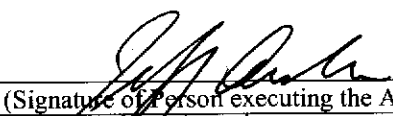
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

ALLIED WASTE SERVICES OF NORTH AMERICA, LLC

a Delaware corporation

By: 
(Signature of Person executing the Agreement on behalf of Contractor)
Name: Jeff Andrews
Title: Vice President
Local Address: 6800 Koll Center Parkway, Ste 320
Pleasanton, CA 94566
Telephone: (925) 201-5802
Fax: (925) 201-5857

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
ALLIED WASTE SERVICES OF NORTH AMERICA, LLC**

"EXHIBIT "A"

**(EXAMPLE FORMAT) RECORDS OF GROSS BILLINGS
AND VOLUMES OF INDUSTRIAL REFUSE
AND RECYCLABLE MATERIALS**

I, _____, declare:
(Name)

A. I am the _____, of _____.
(Capacity: Treasurer, etc.) (Company Name)

B. For the quarter ending _____,
(March, June, September or December)

The gross billings and service levels for the indicated companies were as follows:

1. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

2. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

3. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

4. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

5. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE APPROPRIATE RECORDS AND BELIEVE THE INFORMATION TO BE TRUE, CORRECT AND COMPLETE.

Name

Title

Signature

Date

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
ALLIED WASTE SERVICES OF NORTH AMERICA, LLC**

“EXHIBIT “B”

**(EXAMPLE FORMAT) CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE
INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME
COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF
SANTA CLARA)**

MAIL TO: (Certificate and Payment)
City of Santa Clara; Accounting Services
1500 Warburton Avenue; Santa Clara, CA 95050

cc: (Certificate Only)
City of Santa Clara; Director of Streets & Auto Services
1500 Warburton Avenue; Santa Clara, CA 95050

CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF
CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)

Company Name: _____ Calendar Year _____
Reporting Quarter: _____

Name: _____ Title: _____ Phone: _____

PART I- REPORTING QUARTER COLLECTION SUMMARY

A. Refuse Collection (including non-source separated mixed debris containers not taken to a MRF with a recovery rate of at least 30%)

1. Refuse Collected and Taken Directly to a Landfill with no Processing:

- a. Landfill used to dispose of refuse: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of refuse collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

<i>Roll-Off (Loose)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>	<i>Roll-Off (Compacted)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>
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<i>Front-Loaded (Loose)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>	Total Weight of All Refuse	<u>lbs.</u>	<u>tons</u>
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d. Total gross billings for refuse collection service for customers
(franchise fees will be 16% of gross billings) \$ _____

2. Mixed debris taken to a Materials Recovery Facility for Processing

- a. Material Recovery Facility (MRF) used: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of mixed debris collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off (Loose)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)	Roll-Off (Compacted)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)
Front-Loaded (Loose)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)	Total Weight of All Mixed Debris			
						lbs.	tons

d. MRF Recovery Rate: _____

e. Amount of material disposed of as refuse: _____ tons

f. Amount of material recycled: _____ tons

g. Total gross billings for all customer accounts whose waste was taken to a MRF with a recovery rate of 30% or greater (10% of gross billings) \$ _____

B. Collection of Source Separated Recyclable Materials (less than 5% contamination)

1. Number of customer accounts serviced in the City of Santa Clara: _____

2. Total quantity of recyclables collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off (Loose)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)	Roll-Off (Compacted)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)
Front-Loaded (Loose)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)	Total Weight of All Recyclables			
						lbs.	tons

3. Total gross billings for all customer accounts receiving collection of source separated recyclable materials (3% of gross billings) \$ _____

PART II – FRANCHISE FEE PAYMENT CALCULATION

A. _____ x 16% = \$ _____
Gross Billings Amount from I-A.1(d)

B. _____ x 10% = \$ _____
Gross Billings Amount from I-A.2(g)

C. _____ x 3% = \$ _____
Gross Billings Amount from I-B.3

D. Total Franchise Fees For Reporting Quarter: \$ _____

I declare under penalty of perjury that I have examined the appropriate records and believe the information to be true, correct, and complete; that I will maintain these records in my office for review by the City, and that I am authorized to make and submit this certificate to the City of Santa Clara.

Executed on _____

Declarant Signature: _____

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
ALLIED WASTE SERVICES OF NORTH AMERICA, LLC**

"EXHIBIT "C"

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of

such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request,

Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Street Department

c/o Insurance Data Services - Insurance Compliance

P.O. 12010-S2

or

151 North Lyon Avenue

Hemet, CA 92546-8010

Hemet, CA 92543

Telephone: (951) 766-2280; or

Fax: (951) 766-2299

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA AND
ALLIED WASTE SERVICES OF NORTH AMERICA, LLC**

EXHIBIT "D"

***ETHICAL STANDARDS FOR CONTRACTORS
SEEKING TO ENTER INTO AN AGREEMENT WITH
THE CITY OF SANTA CLARA, CALIFORNIA
Termination of Agreement for Certain Acts***

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor¹ does any of the following:

- a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
- b. Is convicted of a crime punishable as a felony involving dishonesty³;
- c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
- d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director,

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation) and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. If City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to the these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files an petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
ALLIED WASTE SERVICES OF NORTH AMERICA, LLC**

EXHIBIT "E"


**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
(CITY OF SANTA CLARA)**

I, Gil Cheso, being first duly sworn, depose and say that I am the General Manager of Allid Waste Services of North America, LLC and I hereby state that I have read and understand the language, titled "*ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*" (herein "Ethical Standards") set forth in Exhibit "E". I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit "E" [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit "E" within the past five (5) years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

ALLIED WASTE SERVICES OF NORTH AMERICA, LLC
a Corporation

By: _____


Signature of Authorized Person or Representative

Name: Gil Cheso

Title: General Manager

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
ALLIED WASTE SERVICES OF NORTH AMERICA, LLC**

EXHIBIT "F"

WASTE AUDIT REPORTING REQUIREMENTS

The Waste Audit Report shall identify each customer by a customer identification (I.D.) number/letter. A matching list with the customer name and addresses must remain on file with the Contractor and available to the City upon request. The Contractor may submit a new waste audit to the **City** at any time, to reduce the franchise fees paid for those customers that qualify for a non-exclusive franchise fee reduction.

The Waste Audit must be performed and Certified by Statement of a qualified individual/firm experienced in the Waste Audit process. Typical qualifications of an individual or firm would be;

- ☐ Individual (s) with 4-year degree in Civil Engineering or Environmental Waste Management with experience in preparing Waste Audits would prepare and certify the report,
- ☐ Individuals with other type education and experience approved by the City, or
- ☐ Waste Audit Report prepared by a Consulting Engineering Firm experienced in preparing Waste Audits.

City shall review and determine adequacy and completeness of Waste Audit Report. Any comments will be submitted to Contractor for response, revision, update, and re-submittal of Report.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California

County of

SANTA CLARA

} ss.

☒ See Attached Document (Notary to cross out lines 1-6 below)

☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], not Notary)

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

Subscribed and sworn to (or affirmed) before me on this

21st day of NOVEMBER, 2008, by
Date Month Year

(1) G. I. Cheso
Name of Signer

☐ Personally known to me

☒ Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

UNDER PENALTY OF PERJURY

(2) _____
Name of Signer

☐ Personally known to me

☐ Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)



Michael Kaufman
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Non Exclusive Franchise Agreement
Between City of Santa Clara, CA & Allied Waste
Document Date: Nov 21, 2008 Number of Pages: 7

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT
OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT
OF SIGNER #2
Top of thumb here

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
CALIFORNIA WASTE SOLUTIONS, INC.**

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
CALIFORNIA WASTE SOLUTIONS, INC.**

This Non-Exclusive Franchise Agreement ("Agreement") is made and entered into this day of _____, 2008 ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City"), and California Waste Solutions, a California corporation, with its principal place of business located at 1005 Timothy Drive, San Jose, CA 95133 ("Contractor"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement".

RECITALS

Whereas:

- A. This Agreement is entered into pursuant to Ordinance 1709 of the City of Santa Clara, entitled, "An Ordinance of the City of Santa Clara, California Repealing the Existing Chapter 13, Article III of 'The Code of the City of Santa Clara, California' in its entirety and adopting a new Chapter 13, Article III Pertaining to the 'Accumulation, Transportation and Disposal of Waste Matter'" passed and finally adopted by the City Council of the City of Santa Clara, California on the 6th day of January, 1998;
- B. All the provisions of Ordinance No. 1709, and the provisions of any other applicable City ordinance, are hereby referred to and made a part of this Agreement, as if the same were herein specifically set forth. Contractor agrees to faithfully perform each and every provision, term, condition, and covenant contained in this Agreement, addition to each and every provision, term, condition, and act of said Ordinance(s);
- C. Contractor is willing, able, and competent to provide collection and hauling services for collection of recyclable materials and/or the disposal of refuse generated from industrially zoned establishments in the City of Santa Clara; and
- D. It is deemed to be to the mutual advantage of City and the Contractor to provide these services for the industrial community, and to promote the health, safety, and welfare of all City residents.

In consideration of the above recitals and the following mutual covenants, agreements and obligations of the Parties, the City, and Contractor agree as follows:

AGREEMENT PROVISIONS AGREEMENT PROVISIONS

1. DEFINITION OF TERMS.

Wherever used in this Agreement, the following terms shall have the following meanings. The singular of any definition shall include the plural and the plural shall include the singular.

a. Commercial

The term "commercial" shall mean the designated zoning for commercial, professional office (OA), or general office (OG) development as shown on the official Zoning Map of the City of Santa Clara.

b. Industrial

The term "industrial" shall mean a parcel of real property designated as being located in a industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara.

c. Industrial Refuse

The term "industrial refuse" shall mean all classes of solid wastes generated in the industrial zoning districts of City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, and including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

d. Institutional

The term "institutional" shall mean the designated zoning for public (B) or quasi-public (B) development as shown on the official Zoning Map of the City of Santa Clara.

e. Planned Development

The term "planned development" shall mean designated zoning for planned developments (PD) as shown on the official Zoning Map of the City of Santa Clara. The determination of whether specific properties with PD Zoning shall be considered industrial or other type zoning shall be determined solely by the Director of Planning and Inspection.

f. Recoverable Material

The term "recoverable material" shall mean all materials that have the potential to be recovered from garbage containers and recycled. This material shall include: wood waste, white paper, news paper, mixed paper, cardboard, green waste, concrete, and scrap metals.

g. Recyclable Material

The term "recyclable material" shall mean newspapers, cardboard, clean cans, bottles, glass, scrap metal, and high grade paper, including Recoverable Material not contaminated by garbage or other waste materials.

h. Source Separated Recyclables

The term "source separated recyclables" shall mean recyclable material that is separated by the customer and placed into containers designated for recycling specific types of recoverable materials. The containers must have less than five percent (5%) contamination to be considered source separated and qualify for the reduced franchise fee.

i. Refuse

All classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

j. Material Recovery Facility (MRF)

The term "material recovery facility" shall mean a facility that processes refuse or mixed debris for the purpose of removing recoverable materials for recycling.

k. Residential

The term "residential" shall mean the designated zoning for residential (R) development as shown on the official Zoning Map of the City of Santa Clara, or other property used for residential purposes, regardless of its zoning designation.

l. Quarter

The term "quarter" shall mean a three (3) month period, or portion thereof, ending the last day of the following months: March, June, September, and December.

m. Waste Audit

The term "waste audit" shall mean Contractor periodically supplied certified report of amounts of recoverable material and garbage for specific customers which may be required by the City per terms and conditions described herein.

2. TERM OF AGREEMENT.

Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate at the end of day on December 31, 2011.

3. CONTRACTOR'S OBLIGATIONS AND HOURS OF OPERATION.

a. Obligation

City hereby grants to Contractor a nonexclusive right to provide the services required, and to furnish whatever labor, equipment, materials, and supplies which may be necessary, for the

purpose of collecting and picking up recyclable materials and industrial refuse, and to remove and transport said material to its destination from industrial zones in the City of Santa Clara for a period of time commencing on the Effective Date, subject to the termination provisions in Paragraph 13. Contractor agrees, in accordance with the covenants and agreements contained in this Agreement, to provide said services.

b. Restrictions

Contractor shall not charge for the collection and disposal of refuse or recyclables in commercial, institutional, and residential zoned property in the City unless authorized by separate franchise agreement with the City. Contractor may collect from these areas recoverable and recyclable material at no charge or fee to customer, including any hauling, bin rental, equipment rental, management, or similar service charge or fees. Any recoverable and recyclable material setout for collection must be setout in separately marked containers, and not contaminated by garbage.

c. Building Construction Exception

Exceptions in commercial, institutional, and residential zoned properties will be allowed for Contractor who has declared to City their primary business activity is building construction, and/or building demolition. Contractor must provide City with documentation that demonstrates that construction site clean-up services are being performed, with the cost of debris hauling and recycling itemized out for reporting purposes. In order to qualify for this exception, the construction contractor must utilize its own personnel to load the recoverable material into containers. This exemption does not apply for refuse. Contractor is required to report the amount of recyclable materials collected and pay franchise fees on the debris hauling/recycling portion of the charge to the customer.

d. Hours of Operation

All collections shall be made as quietly as possible, without unnecessary noise, disturbance, or commotion. Collections from any premises shall not be made prior to 4:00 a.m., and for areas that abut residential areas, collections shall not commence prior to 7:00 a.m.

4. NON-EXCLUSIVE FRANCHISE FEE PAYMENTS TO CITY.

Contractor shall pay to City a franchise fee ("Non-exclusive Franchise Fee") for the privilege of engaging in the business of collecting, hauling, and transporting recyclable material and industrial refuse to its destination. This Non-exclusive Franchise Fee shall be sixteen percent (16%) of the total gross billings for refuse that is not processed through a material recovery facility (MRF) that diverts at least thirty percent (30%), or source separated recyclable containers that have contamination levels greater than five percent (5%); ten percent (10%) of the total gross billings for refuse that is taken to a MRF that diverts at least thirty percent (30%); and three percent (3%) of the total gross billings for service of source separated recyclables with a contamination rate of less than five percent (5%). Bin and equipment rental charges are to be included in the gross billings for each industrial customer.

5. QUARTERLY AND ANNUAL REPORTING TO CITY.

Contractor shall file with the City's Director of Finance and forward a copy to the City's Director of Streets and Automotive Services, for each quarter's reporting period (or portion thereof), a written statement certifying the total gross billings for refuse and recycling issued during the period and total number of customers for which such statement is rendered and filed. Said statement shall be due within thirty (30) calendar days following the end of each quarter. Each statement shall be executed and submitted on a report form included herein as Exhibit "B" entitled "CERTIFICATE OF GROSS BILLINGS NON EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA, CALIFORNIA)".

Each certifying written statement filed with the City's Director of Finance shall be accompanied by the Non-exclusive Franchise Fee payment equal to the appropriate percentage of the gross billings certified. Non-exclusive Franchise Fee payments shall be delinquent on the thirty-first (31st) calendar day following the completion of the reporting period. Delinquent Non-exclusive Franchise Fee payments shall bear interest, commencing from the date of delinquency, at the rate of one and one quarter percent (1.25%) per month, or part thereof, simple interest in addition to penalties described in Section 21, herein. Failure to report and/or pay in a timely manner for more than one quarter, or failure to pay constitutes cause for termination of this Agreement per terms of Section 15b, of this Agreement.

A Contractor with a total reportable gross billings in excess of one hundred thousand (\$100,000) dollars per year shall submit annually, a report and an opinion by an independent certified public accountant that the Contractor's records were examined and the quarterly reports were a fair and accurate representation of the gross billings and Non-exclusive Franchise Fees owed the City. Said report shall be filed within one hundred (100) days after the end of the Contractor's fiscal year.

A Contractor providing recycling services without charge or compensation or for which customers are paid for materials must submit a quarterly report as described in Exhibit "B", listing the volume or tons diverted from customers within the City and certifying that no revenues were collected for recycling service or bin rental.

6. RECORDS.

Contractor shall keep and maintain full and complete records in Contractor's local office showing all City industrial refuse hauling and recyclable material collection business transacted. Such records shall be available in Contractor's offices for audit and inspection at any and all reasonable times upon request or demand of the City Manager or her/his designee. The records shall be maintained on the form entitled "RECORDS OF GROSS BILLINGS AND VOLUMES OF INDUSTRIAL REFUSE AND RECYCLABLE MATERIALS" and attached as Exhibit "A". A similar accounting format which provides the same type of information and summaries may be used if approved by the City Manager or her/his designee. The records must be kept on file for a period of three (3) years following the expiration or termination of this Agreement.

Failure to maintain adequate records and keep them on file for a period of three (3) years

following expiration or termination of this Agreement, whichever occurs first, shall be cause for the City to conduct, or hire an independent accounting firm to conduct, an extensive audit of Contractor's available records and Contractor's industrial customers' records to determine if additional Non-exclusive Franchise Fee payments are due to City. The costs of this audit shall be borne by Contractor. Prior to conducting this audit, City shall give Contractor written notice of deficiencies in record keeping and Contractor shall have thirty (30) calendar days to cure the default.

If the default is not cured within the time allotted, City shall have the right to conduct said audit and the cost of said audit, including additional Non-exclusive Franchise Fee payments plus interest at the rate of one and one quarter percent (1.25%) per month simple interest, shall be paid to City by Contractor within fifteen (15) days of receipt of audit report and billing by Contractor. Failure to maintain adequate records as required constitutes cause for termination of this Agreement, per terms of Section 15b, of this Agreement.

7. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that at all times herein mentioned, Contractor shall be deemed to be an independent contractor and that all work done hereunder shall be done and performed to the satisfaction of the City Manager who shall from time to time have the right, as circumstances require, to issue reasonable orders, directions, and instructions to Contractor having for their purpose the attainment of the results herein sought to be accomplished; provided however, that the means whereby such results are to be accomplished shall at all times be under the control of Contractor.

It is further agreed that neither Contractor, nor employee(s) of Contractor shall be deemed to be an agent or employee of City. Contractor, its agents and servants shall not hold themselves out to be the agents or employees of City in any manner whatsoever. It is further provided that Contractor shall not use the firm name containing the words "City" or "Santa Clara" or other words implying municipal ownership without approval of City Council of City.

8. COLLECTION EQUIPMENT - DESCRIPTION AND MARKING.

Contractor undertakes and agrees to carry out and perform the obligations of this Agreement in a sanitary, good, and workmanlike manner. All industrial refuse, and recyclable material collected by Contractor shall be transported in modern collection equipment, so constructed and so loaded that there will not be any leakage or dropping of industrial refuse or recyclable material therefrom. Said industrial refuse, when placed in any such vehicle and during its passage to its destination, shall be suitably enclosed so as to prevent spillage. Collection vehicles shall be uniformly painted and numbered, and shall have Contractor's name and the vehicle number painted in contrasting colors on each side and on the rear of the vehicle. Contractor's colors and color patterns on vehicles and bins shall be approved by City and be sufficiently different to be distinguishable from other non-exclusive franchise industrial refuse and recycling collection contractors. Collection vehicles shall be repainted at least once every forty-two (42) months, with touch-ups in the interim as required for aesthetics.

Contractor may furnish City-approved, detachable metal bins or containers to customers. In such event, Contractor shall be responsible for the general repair and upkeep of the bins or containers. Contractor shall repair, repaint or touch-up such bins or containers as required, but not less than

once every two years, and shall maintain such bins or containers in a sanitary non-leaking condition. Contractor's firm name and telephone number shall be indicated clearly on the surface of the bin or container. Bins designated for Recyclable Materials shall be additionally designated with the type of material to be placed therein.

9. OBEYANCE OF LAWS.

Contractor agrees to handle and transport to its destination all collected refuse and recyclable material from industrial establishments and to perform all of the services as required by the provisions of this Agreement, in a careful manner, and in accordance with all laws, ordinances and regulations of the United States, State of California, County of Santa Clara, and City of Santa Clara.

10. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit "C", Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the performance of Franchise Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit "C".

11. ASSIGNMENT.

This Agreement shall not be sublet or assigned, wholly or in part by operation of law or otherwise, without the written approval of the City Council of City.

12. OWNERSHIP AND DISPOSAL OF INDUSTRIAL WASTE AND REFUSE.

All industrial refuse and recyclable material collected by Contractor shall become the property of Contractor immediately upon the collection thereof, and shall immediately be removed and conveyed to its destination. Nothing in this Agreement shall be construed to grant permission to Contractor to dispose of collected industrial refuse at City's designated landfill site at City's preferred disposal rate for exclusive franchise refuse. Capacity at City's designated landfill site has been arranged, but not the disposal rate. Refuse collected by Contractor shall be transported to a legally permitted materials recovery facility, or a legally permitted disposal site outside the corporate limits of City.

13. SANTA CLARA COUNTY AB 939 IMPLEMENTATION FEES.

Contractor is responsible for paying all applicable Countywide AB 939 Implementation Fees on refuse collected in City, even if the refuse is transported to a disposal facility outside of Santa Clara County where the fee is not collected at the gate.

14. TERMINATION OF AGREEMENT.

This Agreement may be terminated under the following circumstances:

a. Contractual Termination Notice

Contractor is aware of the provisions in the California Public Resources Code. Subject to the provisions of Article 3 (Section 49520 et seq.), Chapter 6, Part 8, Division 30 (Entitled "Waste Management", Section 40000 et seq.) of the California Public Resources Code, and subject to earlier termination for cause as set forth in subparagraph b, below, this Agreement shall terminate as of December 31, 2011.

b. Termination for Cause

Notwithstanding the above, if at any time, in the opinion of the City Council, Contractor has failed to adequately perform the terms of this Agreement, City shall have the right and power to terminate this Agreement for cause pursuant to the provisions of Article VI (commencing with subsection 2-73) of Chapter 2 of "The Code of the City of Santa Clara, California" and said termination shall be treated procedurally as if it were a license revocation procedure). In determination of the question whether there has been any such noncompliance with this Agreement as to warrant the termination thereof, the decision of the City Council of the City of Santa Clara shall be final and binding.

c. Contractor Termination Without Cause

Contractor may terminate this Agreement without cause by giving City written notice. Within thirty (30) calendar days of written notice, Contractor shall file a certificate, attached as Exhibit "B", and pay all outstanding Non-exclusive Franchise Fee payments as required under Section 4 herein.

15. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by City and Contractor.

16. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability or perceived disability, religion, ethnic background, or marital status, in violation of state, or federal law.

17. HOLD HARMLESS/INDEMNIFICATION.

Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, or liability of any nature, including wrongful death, caused by or arising out of Contractor's, its officers, agents or employees negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on Contractor with respect to or in any way connected with the Services performed by Contractor under this Agreement, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom.

18. SERVICE OF NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Office of the City Clerk
Attn: Richard J. Mauck,
Director of Streets and Automotive Services
1500 Warburton Avenue
Santa Clara, California 95050
Phone Number: (408) 615-2051
Or by facsimile at: (408) 244-8071

And to Contractor addressed as follows:

California Waste Solutions, Inc.
Attn: Joel Corona, Chief Operations Officer
1005 Timothy Drive
San Jose, CA 95133
Phone Number: (408) 292-0830
Or by facsimile at: (408) 292-0833

19. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

20. NOTICE OF FAILURE TO PERFORM, PENALTIES AND REMEDIES.

a. Notice of Failure to Perform

In addition to any other penalties or remedies available to City or provided under this Agreement or by law, City will give written notice to Contractor for failure to perform any other services and terms of this Agreement. In the notice, City shall also identify any allowable Contractor period of compliance.

b. Remedies

Contractor shall respond to City's written notice of failure to perform and provide written notice to City, within five (5) working days, on remedies, actions, corrections, and if necessary, a schedule of compliance.

c. Penalties for Failure to Perform

Contractor, upon failure to perform the following described terms and conditions of this agreement, shall be fined through the accounts receivable or administrative citation process, the following amounts:

- 1. Early collection of industrial areas abutting residential areas (Section 3c.)-**
\$200.00 per occurrence;

2. Failure to make Non-Exclusive Franchise Fee payment within prescribed period (Section 6) - \$50.00 per day late first three calendar days; thereafter \$100.00 per day late, or one and one-quarter (1 1/4%) percent per month or part thereof of fee due whichever is greater.
3. Failure to submit fully completed quarterly report with payment, (Section 6) - \$50.00 per day late.
4. Failure to renew insurance, and submit Certificate of Insurance prior to expiration date (Section 11) - \$100.00 per day late.
5. Failure to maintain contactor name and phone number on containers - \$100.00 per occurrence.
6. Set out and collection of refuse container (cans, carts, bins, or debris boxes) in the City of Santa Clara outside of the area permitted by this Agreement (Section 3b) - The penalties annually shall be as follows;
 - A) First Violation - \$500.00 per occurrence per collection.
 - B) Second Violation Within a One-Year Period - \$750.00 per occurrence per collection.
 - C) Third Violation Within a One-Year Period - \$1,000.00 per occurrence per collection.
 - D) Fourth Violation Within a One-Year Period - \$1,000.00 per occurrence per collection and cause for Immediate Termination (per Section 14b) of Contractor's Agreement with City.

7. Unauthorized Bins, Boxes, or Containers

The City shall notify, in writing, any Contractor who violates Section 20.c(6) that the prompt and permanent removal of such Bin, Box, or Container from the place or premises is required. The City shall deliver such written notice by posting a copy of the notice prominently upon the Bin, Box, or Container. If the Bin, Box, or Container is identified with the name and telephone number of the solid waste Contractor servicing it, as is required in Section 9, the City shall endeavor to contact the Contractor by telephone or FAX. Failure to notify the Contractor by telephone or Fax shall not make the notice invalid.

The City may impound or cause to be impounded any such Bin, Box, or Container if the item is not permanently removed from the place or premises within the time set forth in the notice, which shall be not less than twenty-four (24) hours after posting of the notice, or not less than noon of the next business day after telephone or FAX notification, if any.

Any Contractor who violates Section 21.c(6) shall be liable to the City for all fines and charges levied in connection with the collection, transportation, storage, and handling of such Bin, Box, or Container by the City. Charges for the impounding and subsequent release of any unauthorized Bin, Box, or Container shall be \$200 plus \$50 per day storage cost. The Bin, Box, or Container impounded by the City shall be retrieved by the Contractor or his or her representative immediately after all applicable fines and charges have been paid. The City Manager may delegate to an authorized contractor the authority to impound unauthorized Bins, Boxes, and Containers.

Contractor will be required to refund any and all fees paid by a customer for the placement of unauthorized Bins, Boxes, and Containers.

8. Failure of Contractor to maintain Contractor's vehicles, bins, or containers in prescribed condition (Section 8) - \$25.00 per each day late based upon an agreed compliance schedule.
9. Failure to submit, if required, annual independent certified public accountant report and opinion Contractor's records and quarterly reports were fair and accurate (Section 6) - \$50.00 per each day late first month; \$100.00 per each day late thereafter.
10. Failure to submit any required Waste Audit reports (Exhibit F) entitled "Waste Audit Reporting Requirements": \$50 per each day late first 30 days; \$100 per day 30-60 days late; \$150 per day 60-90 days late. Immediate termination of Contract if report is over 90 days late. City shall provide written notice to Contractor after each thirty (30) day late period extended beyond the due date.

21. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- a. read the attached Exhibit "D", entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- b. execute the affidavit attached as Exhibit "E", entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

22. DISPOSAL REPORTING.

Contractor's quarterly reporting to City required in Section 6 shall correspond to quantities reported as required per State of California Regulatory Code Title 14, Division 7, Article 9.2, Disposal Reporting System. Any discrepancies noted by City in writing to Contractor shall be explained and documentation provided in a timely manner. Contractor shall provide quarterly report to City of all refuse and recoverable material taken to, and City material/refuse removed from, a Transfer Station (s) or processing center (s).

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager


ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

“City”

**CALIFORNIA WASTE SOLUTIONS, INC.
a California corporation**

By: 

(Signature of Person executing the Agreement on behalf of Contractor)

Name: Joel Corona

Title: Chief Operations Officer

Local Address: 1005 Timothy Drive

San Jose, CA 95133

Telephone (408) 292-0830

Fax: (408) 292-0833

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
CALIFORNIA WASTE SOLUTIONS, INC.**

"EXHIBIT "A"

**(EXAMPLE FORMAT) RECORDS OF GROSS BILLINGS
AND VOLUMES OF INDUSTRIAL REFUSE
AND RECYCLABLE MATERIALS**

I, _____, declare:
(Name)

A. I am the _____, of _____.
(Capacity: Treasurer, etc.) (Company Name)

B. For the quarter ending _____,
(March, June, September or December)

The gross billings and service levels for the indicated companies were as follows:

1. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

2. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

3. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

4. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

5. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE APPROPRIATE RECORDS AND BELIEVE THE INFORMATION TO BE TRUE, CORRECT AND COMPLETE.

Name

Title

Signature

Date

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
CALIFORNIA WASTE SOLUTIONS, INC.**

"EXHIBIT "B"

**(EXAMPLE FORMAT) CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL
FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND
RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)**

MAIL TO: (Certificate and Payment)
City of Santa Clara; Accounting Services
1500 Warburton Avenue; Santa Clara, CA 95050

cc: (Certificate Only)
City of Santa Clara; Director of Streets & Auto Services
1500 Warburton Avenue; Santa Clara, CA 95050

CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF
CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)

Company Name: _____ Calendar Year _____
Reporting Quarter: _____

Name: _____ Title: _____ Phone: _____

PART I- REPORTING QUARTER COLLECTION SUMMARY

A. Refuse Collection (including non-source separated mixed debris containers not taken to a MRF with a recovery rate of at least 30%)

1. Refuse Collected and Taken Directly to a Landfill with no Processing:

a. Landfill used to dispose of refuse: _____

b. Number of customer accounts serviced in the City of Santa Clara: _____

c. Total quantity of refuse collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Roll-Off
(Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Total Weight of _____
All Refuse lbs. tons

d. **Total gross billings for refuse collection service for customers
(franchise fees will be 16% of gross billings)** \$ _____

2. Mixed debris taken to a Materials Recovery Facility for Processing

a. Material Recovery Facility (MRF) used: _____

b. Number of customer accounts serviced in the City of Santa Clara: _____

c. Total quantity of mixed debris collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of

containers:

Roll-Off
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Roll-Off
(Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Total Weight of
All Mixed Debris lbs. tons

d. MRF Recovery Rate: _____

e. Amount of material disposed of as refuse: _____ tons

f. Amount of material recycled: _____ tons

g. Total gross billings for all customer accounts whose waste was taken to a MRF
with a recovery rate of 30% or greater (10% of gross billings) \$ _____

B. Collection of Source Separated Recyclable Materials (less than 5% contamination)

1. Number of customer accounts serviced in the City of Santa Clara: _____

2. Total quantity of recyclables collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Roll-Off
(Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Total Weight of
All Recyclables lbs. tons

3. Total gross billings for all customer accounts receiving collection
of source separated recyclable materials (3% of gross billings) \$ _____

PART II – FRANCHISE FEE PAYMENT CALCULATION

A. _____ x 16% = \$ _____
Gross Billings Amount from I-A.1(d)

B. _____ x 10% = \$ _____
Gross Billings Amount from I-A.2(g)

C. _____ x 3% = \$ _____
Gross Billings Amount from I-B.3

D. Total Franchise Fees For Reporting Quarter: \$ _____

I declare under penalty of perjury that I have examined the appropriate records and believe the information to be true, correct, and complete; that I will maintain these records in my office for review by the City, and that I am authorized to make and submit this certificate to the City of Santa Clara.

Executed on _____

Declarant Signature: _____

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
CALIFORNIA WASTE SOLUTIONS, INC.**

"EXHIBIT "C"

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of

such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request,

Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Street Department

c/o Insurance Data Services - Insurance Compliance

P.O. 12010-S2

or

151 North Lyon Avenue

Hemet, CA 92546-8010

Hemet, CA 92543

Telephone: (951) 766-2280; or

Fax: (951) 766-2299

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

In:\dave\DAVE'S-TIME\Hauler\09-08\NID-agreements\NILE ACKNOWLEDGMENT-California Waste Solutions, Inc.doc

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
CALIFORNIA WASTE SOLUTIONS, INC.**

EXHIBIT "D"

***ETHICAL STANDARDS FOR CONTRACTORS
SEEKING TO ENTER INTO AN AGREEMENT WITH
THE CITY OF SANTA CLARA, CALIFORNIA
Termination of Agreement for Certain Acts***

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor¹ does any of the following:

- a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
- b. Is convicted of a crime punishable as a felony involving dishonesty³;
- c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
- d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation) and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. If City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to the these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files an petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
CALIFORNIA WASTE SOLUTIONS, INC.**

EXHIBIT "E"

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
(CITY OF SANTA CLARA)**

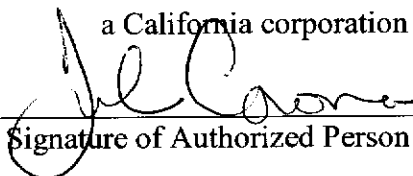
I, Joel Corona, being first duly sworn, depose and say that I am the Chief Operations Officer of California Waste Solutions, Inc. and I hereby state that I have read and understand the language, titled "*ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*" (herein "Ethical Standards") set forth in Exhibit "E". I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit "E" [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit "E" within the past five (5) years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

CALIFORNIA WASTE SOLUTIONS, INC.

a California corporation

By:



Signature of Authorized Person or Representative

Name: Joel Corona

Title: Chief Operations Officer

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
CALIFORNIA WASTE SOLUTIONS, INC.**

EXHIBIT "F"

WASTE AUDIT REPORTING REQUIREMENTS

The Waste Audit Report shall identify each customer by a customer identification (I.D.) number/letter. A matching list with the customer name and addresses must remain on file with the Contractor and available to the City upon request. The Contractor may submit a new waste audit to the City at any time, to reduce the franchise fees paid for those customers that qualify for a non-exclusive franchise fee reduction.

The Waste Audit must be performed and Certified by Statement of a qualified individual/firm experienced in the Waste Audit process. Typical qualifications of an individual or firm would be;

- ☐ Individual (s) with 4-year degree in Civil Engineering or Environmental Waste Management with experience in preparing Waste Audits would prepare and certify the report,
- ☐ Individuals with other type education and experience approved by the City, or
- ☐ Waste Audit Report prepared by a Consulting Engineering Firm experienced in preparing Waste Audits.

City shall review and determine adequacy and completeness of Waste Audit Report. Any comments will be submitted to Contractor for response, revision, update, and re-submittal of Report.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

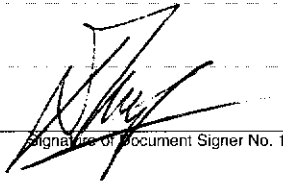
State of California

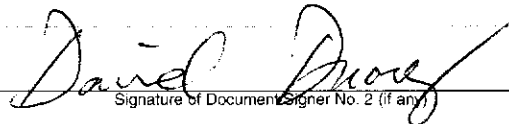
County of ALAMEDA

} ss.

☐ See Attached Document (Notary to cross out lines 1-6 below)

☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)


Signature of Document Signer No. 1


Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this

14th day of November, 2008, by
Date Month Year

(1) DAVID TRUNG DUONG,
Name of Signer

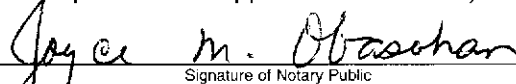
☐ Personally known to me

☒ Proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) (.)
(and

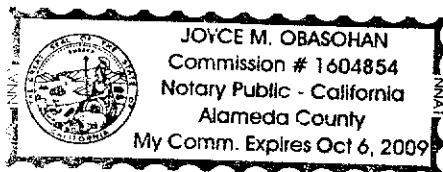
(2) _____,
Name of Signer

☐ Personally known to me

☐ Proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)


Signature of Notary Public

Place Notary Seal Above



OPTIONAL

*Though the information below is not required by law, it may prove
valuable to persons relying on the document and could prevent
fraudulent removal and reattachment of this form to another document.*

Further Description of Any Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

**RIGHT THUMBPRINT
OF SIGNER #1**

Top of thumb here

**RIGHT THUMBPRINT
OF SIGNER #2**

Top of thumb here

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
GREENWASTE RECOVERY, INC.**

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
GREENWASTE RECOVERY, INC.**

This Non-Exclusive Franchise Agreement ("Agreement") is made and entered into this _____ day of _____, 2008 ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City"), and GreenWaste Recovery, Inc., a California corporation, with its principal place of business located at 1500 Berger Drive, San Jose, CA 95112 ("Contractor"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement".

RECITALS

Whereas:

- A. This Agreement is entered into pursuant to Ordinance 1709 of the City of Santa Clara, entitled, "An Ordinance of the City of Santa Clara, California Repealing the Existing Chapter 13, Article III of 'The Code of the City of Santa Clara, California' in its entirety and adopting a new Chapter 13, Article III Pertaining to the 'Accumulation, Transportation and Disposal of Waste Matter'" passed and finally adopted by the City Council of the City of Santa Clara, California on the 6th day of January, 1998;
- B. All the provisions of Ordinance No. 1709, and the provisions of any other applicable City ordinance, are hereby referred to and made a part of this Agreement, as if the same were herein specifically set forth. Contractor agrees to faithfully perform each and every provision, term, condition, and covenant contained in this Agreement, addition to each and every provision, term, condition, and act of said Ordinance(s);
- C. Contractor is willing, able, and competent to provide collection and hauling services for collection of recyclable materials and/or the disposal of refuse generated from industrially zoned establishments in the City of Santa Clara; and
- D. It is deemed to be to the mutual advantage of City and the Contractor to provide these services for the industrial community and to promote the health, safety, and welfare of all City residents.

In consideration of the above recitals and the following mutual covenants, agreements and obligations of the Parties, the City, and Contractor agree as follows:

AGREEMENT PROVISIONS AGREEMENT PROVISIONS

1. DEFINITION OF TERMS.

Wherever used in this Agreement, the following terms shall have the following meanings. The singular of any definition shall include the plural and the plural shall include the singular.

a. Commercial

The term "commercial" shall mean the designated zoning for commercial, professional office (OA), or general office (OG) development as shown on the official Zoning Map of the City of Santa Clara.

b. Industrial

The term "industrial" shall mean a parcel of real property designated as being located in a industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara.

c. Industrial Refuse

The term "industrial refuse" shall mean all classes of solid wastes generated in the industrial zoning districts of City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, and including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

d. Institutional

The term "institutional" shall mean the designated zoning for public (B) or quasi-public (B) development as shown on the official Zoning Map of the City of Santa Clara.

e. Planned Development

The term "planned development" shall mean designated zoning for planned developments (PD) as shown on the official Zoning Map of the City of Santa Clara. The determination of whether specific properties with PD Zoning shall be considered industrial or other type zoning shall be determined solely by the Director of Planning and Inspection.

f. Recoverable Material

The term "recoverable material" shall mean all materials that have the potential to be recovered from garbage containers and recycled. This material shall include: wood waste, white paper, news paper, mixed paper, cardboard, green waste, concrete, and scrap metals.

g. Recyclable Material

The term "recyclable material" shall mean newspapers, cardboard, clean cans, bottles, glass, scrap metal, and high grade paper, including Recoverable Material not contaminated by garbage or other waste materials.

h. Source Separated Recyclables

The term "source separated recyclables" shall mean recyclable material that is separated by the customer and placed into containers designated for recycling specific types of recoverable materials. The containers must have less than five percent (5%) contamination to be considered source separated and qualify for the reduced franchise fee.

i. Refuse

All classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

j. Material Recovery Facility (MRF)

The term "material recovery facility" shall mean a facility that processes refuse or mixed debris for the purpose of removing recoverable materials for recycling.

k. Residential

The term "residential" shall mean the designated zoning for residential (R) development as shown on the official Zoning Map of the City of Santa Clara, or other property used for residential purposes, regardless of its zoning designation.

l. Quarter

The term "quarter" shall mean a three (3) month period, or portion thereof, ending the last day of the following months: March, June, September, and December.

m. Waste Audit

The term "waste audit" shall mean Contractor periodically supplied certified report of amounts of recoverable material and garbage for specific customers which may be required by the City per terms and conditions described herein.

2. TERM OF AGREEMENT.

Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate at the end of day on December 31, 2011.

3. CONTRACTOR'S OBLIGATIONS AND HOURS OF OPERATION.

a. Obligation

City hereby grants to Contractor a nonexclusive right to provide the services required, and to furnish whatever labor, equipment, materials, and supplies which may be necessary, for the

purpose of collecting and picking up recyclable materials and industrial refuse, and to remove and transport said material to its destination from industrial zones in the City of Santa Clara for a period of time commencing on the Effective Date, subject to the termination provisions in Paragraph 13. Contractor agrees, in accordance with the covenants and agreements contained in this Agreement, to provide said services.

b. Restrictions

Contractor shall not charge for the collection and disposal of refuse or recyclables in commercial, institutional, and residential zoned property in the City unless authorized by separate franchise agreement with the City. Contractor may collect from these areas recoverable and recyclable material at no charge or fee to customer, including any hauling, bin rental, equipment rental, management, or similar service charge or fees. Any recoverable and recyclable material setout for collection must be setout in separately marked containers, and not contaminated by garbage.

c. Building Construction Exception

Exceptions in commercial, institutional, and residential zoned properties will be allowed for Contractor who has declared to City their primary business activity is building construction, and/or building demolition. Contractor must provide City with documentation that demonstrates that construction site clean-up services are being performed, with the cost of debris hauling and recycling itemized out for reporting purposes. In order to qualify for this exception, the construction contractor must utilize its own personnel to load the recoverable material into containers. This exemption does not apply for refuse. Contractor is required to report the amount of recyclable materials collected and pay franchise fees on the debris hauling/recycling portion of the charge to the customer.

d. Hours of Operation

All collections shall be made as quietly as possible, without unnecessary noise, disturbance, or commotion. Collections from any premises shall not be made prior to 4:00 a.m., and for areas that abut residential areas, collections shall not commence prior to 7:00 a.m.

4. NON-EXCLUSIVE FRANCHISE FEE PAYMENTS TO CITY.

Contractor shall pay to City a franchise fee ("Non-exclusive Franchise Fee") for the privilege of engaging in the business of collecting, hauling, and transporting recyclable material and industrial refuse to its destination. This Non-exclusive Franchise Fee shall be sixteen percent (16%) of the total gross billings for refuse that is not processed through a material recovery facility (MRF) that diverts at least thirty percent (30%), or source separated recyclable containers that have contamination levels greater than five percent (5%); ten percent (10%) of the total gross billings for refuse that is taken to a MRF that diverts at least thirty percent (30%); and three percent (3%) of the total gross billings for service of source separated recyclables with a contamination rate of less than five percent (5%). Bin and equipment rental charges are to be included in the gross billings for each industrial customer.

5. QUARTERLY AND ANNUAL REPORTING TO CITY.

Contractor shall file with the City's Director of Finance and forward a copy to the City's Director of Streets and Automotive Services, for each quarter's reporting period (or portion thereof), a written statement certifying the total gross billings for refuse and recycling issued during the period and total number of customers for which such statement is rendered and filed. Said statement shall be due within thirty (30) calendar days following the end of each quarter. Each statement shall be executed and submitted on a report form included herein as Exhibit "B" entitled "CERTIFICATE OF GROSS BILLINGS NON EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA, CALIFORNIA)".

Each certifying written statement filed with the City's Director of Finance shall be accompanied by the Non-exclusive Franchise Fee payment equal to the appropriate percentage of the gross billings certified. Non-exclusive Franchise Fee payments shall be delinquent on the thirty-first (31st) calendar day following the completion of the reporting period. Delinquent Non-exclusive Franchise Fee payments shall bear interest, commencing from the date of delinquency, at the rate of one and one quarter percent (1.25%) per month, or part thereof, simple interest in addition to penalties described in Section 21, herein. Failure to report and/or pay in a timely manner for more than one quarter, or failure to pay constitutes cause for termination of this Agreement per terms of Section 15b, of this Agreement.

A Contractor with a total reportable gross billings in excess of one hundred thousand (\$100,000) dollars per year shall submit annually, a report and an opinion by an independent certified public accountant that the Contractor's records were examined and the quarterly reports were a fair and accurate representation of the gross billings and Non-exclusive Franchise Fees owed the City. Said report shall be filed within one hundred (100) days after the end of the Contractor's fiscal year.

A Contractor providing recycling services without charge or compensation or for which customers are paid for materials must submit a quarterly report as described in Exhibit "B", listing the volume or tons diverted from customers within the City and certifying that no revenues were collected for recycling service or bin rental.

6. RECORDS.

Contractor shall keep and maintain full and complete records in Contractor's local office showing all City industrial refuse hauling and recyclable material collection business transacted. Such records shall be available in Contractor's offices for audit and inspection at any and all reasonable times upon request or demand of the City Manager or her/his designee. The records shall be maintained on the form entitled "RECORDS OF GROSS BILLINGS AND VOLUMES OF INDUSTRIAL REFUSE AND RECYCLABLE MATERIALS" and attached as Exhibit "A". A similar accounting format which provides the same type of information and summaries may be used if approved by the City Manager or her/his designee. The records must be kept on file for a period of three (3) years following the expiration or termination of this Agreement.

Failure to maintain adequate records and keep them on file for a period of three (3) years

following expiration or termination of this Agreement, whichever occurs first, shall be cause for the City to conduct, or hire an independent accounting firm to conduct, an extensive audit of Contractor's available records and Contractor's industrial customers' records to determine if additional Non-exclusive Franchise Fee payments are due to City. The costs of this audit shall be borne by Contractor. Prior to conducting this audit, City shall give Contractor written notice of deficiencies in record keeping and Contractor shall have thirty (30) calendar days to cure the default.

If the default is not cured within the time allotted, City shall have the right to conduct said audit and the cost of said audit, including additional Non-exclusive Franchise Fee payments plus interest at the rate of one and one quarter percent (1.25%) per month simple interest, shall be paid to City by Contractor within fifteen (15) days of receipt of audit report and billing by Contractor. Failure to maintain adequate records as required constitutes cause for termination of this Agreement, per terms of Section 15b, of this Agreement.

7. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that at all times herein mentioned, Contractor shall be deemed to be an independent contractor and that all work done hereunder shall be done and performed to the satisfaction of the City Manager who shall from time to time have the right, as circumstances require, to issue reasonable orders, directions, and instructions to Contractor having for their purpose the attainment of the results herein sought to be accomplished; provided however, that the means whereby such results are to be accomplished shall at all times be under the control of Contractor.

It is further agreed that neither Contractor, nor employee(s) of Contractor shall be deemed to be an agent or employee of City. Contractor, its agents and servants shall not hold themselves out to be the agents or employees of City in any manner whatsoever. It is further provided that Contractor shall not use the firm name containing the words "City" or "Santa Clara" or other words implying municipal ownership without approval of City Council of City.

8. COLLECTION EQUIPMENT - DESCRIPTION AND MARKING.

Contractor undertakes and agrees to carry out and perform the obligations of this Agreement in a sanitary, good, and workmanlike manner. All industrial refuse, and recyclable material collected by Contractor shall be transported in modern collection equipment, so constructed and so loaded that there will not be any leakage or dropping of industrial refuse or recyclable material therefrom. Said industrial refuse, when placed in any such vehicle and during its passage to its destination, shall be suitably enclosed so as to prevent spillage. Collection vehicles shall be uniformly painted and numbered, and shall have Contractor's name and the vehicle number painted in contrasting colors on each side and on the rear of the vehicle. Contractor's colors and color patterns on vehicles and bins shall be approved by City and be sufficiently different to be distinguishable from other non-exclusive franchise industrial refuse and recycling collection contractors. Collection vehicles shall be repainted at least once every forty-two (42) months, with touch-ups in the interim as required for aesthetics.

Contractor may furnish City-approved, detachable metal bins or containers to customers. In such event, Contractor shall be responsible for the general repair and upkeep of the bins or containers. Contractor shall repair, repaint or touch-up such bins or containers as required, but not less than

once every two years, and shall maintain such bins or containers in a sanitary non-leaking condition. Contractor's firm name and telephone number shall be indicated clearly on the surface of the bin or container. Bins designated for Recyclable Materials shall be additionally designated with the type of material to be placed therein.

9. OBEYANCE OF LAWS.

Contractor agrees to handle and transport to its destination all collected refuse and recyclable material from industrial establishments and to perform all of the services as required by the provisions of this Agreement, in a careful manner, and in accordance with all laws, ordinances and regulations of the United States, State of California, County of Santa Clara, and City of Santa Clara.

10. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit "C", Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the performance of Franchise Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit "C".

11. ASSIGNMENT.

This Agreement shall not be sublet or assigned, wholly or in part by operation of law or otherwise, without the written approval of the City Council of City.

12. OWNERSHIP AND DISPOSAL OF INDUSTRIAL WASTE AND REFUSE.

All industrial refuse and recyclable material collected by Contractor shall become the property of Contractor immediately upon the collection thereof, and shall immediately be removed and conveyed to its destination. Nothing in this Agreement shall be construed to grant permission to Contractor to dispose of collected industrial refuse at City's designated landfill site at City's preferred disposal rate for exclusive franchise refuse. Capacity at City's designated landfill site has been arranged, but not the disposal rate. Refuse collected by Contractor shall be transported to a legally permitted materials recovery facility, or a legally permitted disposal site outside the corporate limits of City.

13. SANTA CLARA COUNTY AB 939 IMPLEMENTATION FEES.

Contractor is responsible for paying all applicable Countywide AB 939 Implementation Fees on refuse collected in City, even if the refuse is transported to a disposal facility outside of Santa Clara County where the fee is not collected at the gate.

14. TERMINATION OF AGREEMENT.

This Agreement may be terminated under the following circumstances:

a. Contractual Termination Notice

Contractor is aware of the provisions in the California Public Resources Code. Subject to the provisions of Article 3 (Section 49520 et seq.), Chapter 6, Part 8, Division 30 (Entitled "Waste Management", Section 40000 et seq.) of the California Public Resources Code, and subject to earlier termination for cause as set forth in subparagraph b, below, this Agreement shall terminate as of December 31, 2011.

b. Termination for Cause

Notwithstanding the above, if at any time, in the opinion of the City Council, Contractor has failed to adequately perform the terms of this Agreement, City shall have the right and power to terminate this Agreement for cause pursuant to the provisions of Article VI (commencing with subsection 2-73) of Chapter 2 of "The Code of the City of Santa Clara, California" and said termination shall be treated procedurally as if it were a license revocation procedure). In determination of the question whether there has been any such noncompliance with this Agreement as to warrant the termination thereof, the decision of the City Council of the City of Santa Clara shall be final and binding.

c. Contractor Termination Without Cause

Contractor may terminate this Agreement without cause by giving City written notice. Within thirty (30) calendar days of written notice, Contractor shall file a certificate, attached as Exhibit "B", and pay all outstanding Non-exclusive Franchise Fee payments as required under Section 4 herein.

15. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by City and Contractor.

16. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability or perceived disability, religion, ethnic background, or marital status, in violation of state, or federal law.

17. HOLD HARMLESS/INDEMNIFICATION.

Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, or liability of any nature, including wrongful death, caused by or arising out of Contractor's, its officers, agents or employees negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on Contractor with respect to or in any way connected with the Services performed by Contractor under this Agreement, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom.

18. SERVICE OF NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Office of the City Clerk
Attn: Richard J. Mauck,
Director of Streets and Automotive Services
1500 Warburton Avenue
Santa Clara, California 95050
Phone Number: (408) 615-2051
Or by facsimile at: (408) 244-8071

And to Contractor addressed as follows:

GreenWaste Recovery, Inc.
Attn: Frank Weigel, Chief Operating Officer
1500 Berger Drive
San Jose, CA 95112
Phone Number: (408) 938-4902
Or by facsimile at: (408) 287-3108

19. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

20. NOTICE OF FAILURE TO PERFORM, PENALTIES AND REMEDIES.

a. Notice of Failure to Perform

In addition to any other penalties or remedies available to City or provided under this Agreement or by law, City will give written notice to Contractor for failure to perform any other services and terms of this Agreement. In the notice, City shall also identify any allowable Contractor period of compliance.

b. Remedies

Contractor shall respond to City's written notice of failure to perform and provide written notice to City, within five (5) working days, on remedies, actions, corrections, and if necessary, a schedule of compliance.

c. Penalties for Failure to Perform

Contractor, upon failure to perform the following described terms and conditions of this agreement, shall be fined through the accounts receivable or administrative citation process, the following amounts:

1. Early collection of industrial areas abutting residential areas (Section 3c.)-
\$200.00 per occurrence;

2. Failure to make Non-Exclusive Franchise Fee payment within prescribed period (Section 6) - \$50.00 per day late first three calendar days; thereafter \$100.00 per day late, or one and one-quarter (1 1/4%) percent per month or part thereof of fee due whichever is greater.
3. Failure to submit fully completed quarterly report with payment, (Section 6) - \$50.00 per day late.
4. Failure to renew insurance, and submit Certificate of Insurance prior to expiration date (Section 11) - \$100.00 per day late.
5. Failure to maintain contactor name and phone number on containers - \$100.00 per occurrence.
6. Set out and collection of refuse container (cans, carts, bins, or debris boxes) in the City of Santa Clara outside of the area permitted by this Agreement (Section 3b) - The penalties annually shall be as follows;
 - A) First Violation - \$500.00 per occurrence per collection.
 - B) Second Violation Within a One-Year Period - \$750.00 per occurrence per collection.
 - C) Third Violation Within a One-Year Period - \$1,000.00 per occurrence per collection.
 - D) Fourth Violation Within a One-Year Period - \$1,000.00 per occurrence per collection and cause for Immediate Termination (per Section 14b) of Contractor's Agreement with City.

7. Unauthorized Bins, Boxes, or Containers

The City shall notify, in writing, any Contractor who violates Section 20.c(6) that the prompt and permanent removal of such Bin, Box, or Container from the place or premises is required. The City shall deliver such written notice by posting a copy of the notice prominently upon the Bin, Box, or Container. If the Bin, Box, or Container is identified with the name and telephone number of the solid waste Contractor servicing it, as is required in Section 9, the City shall endeavor to contact the Contractor by telephone or FAX. Failure to notify the Contractor by telephone or Fax shall not make the notice invalid.

The City may impound or cause to be impounded any such Bin, Box, or Container if the item is not permanently removed from the place or premises within the time set forth in the notice, which shall be not less than twenty-four (24) hours after posting of the notice, or not less than noon of the next business day after telephone or FAX notification, if any.

Any Contractor who violates Section 21.c(6) shall be liable to the City for all fines and charges levied in connection with the collection, transportation, storage, and handling of such Bin, Box, or Container by the City. Charges for the impounding and subsequent release of any unauthorized Bin, Box, or Container shall be \$200 plus \$50 per day storage cost. The Bin, Box, or Container impounded by the City shall be retrieved by the Contractor or his or her representative immediately after all applicable fines and charges have been paid. The City Manager may delegate to an authorized contractor the authority to impound unauthorized Bins, Boxes, and Containers.

Contractor will be required to refund any and all fees paid by a customer for the placement of unauthorized Bins, Boxes, and Containers.

8. Failure of Contractor to maintain Contractor's vehicles, bins, or containers in prescribed condition (Section 8) - \$25.00 per each day late based upon an agreed compliance schedule.
9. Failure to submit, if required, annual independent certified public accountant report and opinion Contractor's records and quarterly reports were fair and accurate (Section 6) - \$50.00 per each day late first month; \$100.00 per each day late thereafter.
10. Failure to submit any required Waste Audit reports (Exhibit F) entitled "Waste Audit Reporting Requirements": \$50 per each day late first 30 days; \$100 per day 30-60 days late; \$150 per day 60-90 days late. Immediate termination of Contract if report is over 90 days late. City shall provide written notice to Contractor after each thirty (30) day late period extended beyond the due date.

21. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- a. read the attached Exhibit "D", entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- b. execute the affidavit attached as Exhibit "E", entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

22. DISPOSAL REPORTING.

Contractor's quarterly reporting to City required in Section 6 shall correspond to quantities reported as required per State of California Regulatory Code Title 14, Division 7, Article 9.2, Disposal Reporting System. Any discrepancies noted by City in writing to Contractor shall be explained and documentation provided in a timely manner. Contractor shall provide quarterly report to City of all refuse and recoverable material taken to, and City material/refuse removed from, a Transfer Station (s) or processing center (s).

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager

ATTEST:

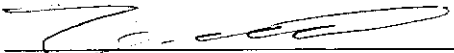
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

GREENWASTE RECOVERY, INC.

a California corporation

By: 
(Signature of Person executing the Agreement on behalf of Contractor)
Name: Frank Weigel
Title: Chief Operating Officer
Local Address: 1500 Berger Dr.
San Jose, CA 95112
Telephone: (408) 283-4804
Fax: (408) 287-3108

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
GREENWASTE RECOVERY, INC.**

"EXHIBIT "A"

**(EXAMPLE FORMAT) RECORDS OF GROSS BILLINGS
AND VOLUMES OF INDUSTRIAL REFUSE
AND RECYCLABLE MATERIALS**

I, _____, declare:
(Name)

A. I am the _____, of _____.
(Capacity: Treasurer, etc.) (Company Name)

B. For the quarter ending _____,
(March, June, September or December)

The gross billings and service levels for the indicated companies were as follows:

1. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

2. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

3. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

4. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

5. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE APPROPRIATE RECORDS AND BELIEVE THE INFORMATION TO BE TRUE, CORRECT AND COMPLETE.

Name

Title

Signature

Date

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
GREENWASTE RECOVERY, INC.**

"EXHIBIT "B"

**(EXAMPLE FORMAT) CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL
FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND
RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)**

MAIL TO: (Certificate and Payment)
City of Santa Clara; Accounting Services
1500 Warburton Avenue; Santa Clara, CA 95050

cc: (Certificate Only)
City of Santa Clara; Director of Streets & Auto Services
1500 Warburton Avenue; Santa Clara, CA 95050

**CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF
CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)**

Company Name: _____ Calendar Year
Reporting Quarter: _____

Name: _____ Title: _____ Phone: _____

PART I- REPORTING QUARTER COLLECTION SUMMARY

A. Refuse Collection (including non-source separated mixed debris containers not taken to a MRF with a recovery rate of at least 30%)

1. Refuse Collected and Taken Directly to a Landfill with no Processing:

- a. Landfill used to dispose of refuse: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of refuse collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

<i>Roll-Off (Loose)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>	<i>Roll-Off (Compacted)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>
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<i>Front-Loaded (Loose)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>	Total Weight of All Refuse	<u>lbs.</u>	<u>tons</u>
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- d. Total gross billings for refuse collection service for customers
(franchise fees will be 16% of gross billings) \$ _____

2. Mixed debris taken to a Materials Recovery Facility for Processing

- a. Material Recovery Facility (MRF) used: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of mixed debris collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Roll-Off
(Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Total Weight of
All Mixed Debris lbs. tons

d. MRF Recovery Rate: _____

e. Amount of material disposed of as refuse: _____ tons

f. Amount of material recycled: _____ tons

g. Total gross billings for all customer accounts whose waste was taken to a MRF
with a recovery rate of 30% or greater (10% of gross billings) \$ _____

B. Collection of Source Separated Recyclable Materials (less than 5% contamination)

1. Number of customer accounts serviced in the City of Santa Clara: _____

2. Total quantity of recyclables collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Roll-Off
(Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Total Weight of
All Recyclables lbs. tons

3. Total gross billings for all customer accounts receiving collection
of source separated recyclable materials (3% of gross billings) \$ _____

PART II – FRANCHISE FEE PAYMENT CALCULATION

A. _____ x 16% = \$ _____
Gross Billings Amount from I-A.1(d)

B. _____ x 10% = \$ _____
Gross Billings Amount from I-A.2(g)

C. _____ x 3% = \$ _____
Gross Billings Amount from I-B.3

D. Total Franchise Fees For Reporting Quarter: \$ _____

I declare under penalty of perjury that I have examined the appropriate records and believe the information to be true, correct, and complete; that I will maintain these records in my office for review by the City, and that I am authorized to make and submit this certificate to the City of Santa Clara.

Executed on _____

Declarant Signature: _____

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
GREENWASTE RECOVERY, INC.**

"EXHIBIT "C"

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of

such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request,

Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Street Department

c/o Insurance Data Services - Insurance Compliance

P.O. 12010-S2

or

151 North Lyon Avenue

Hemet, CA 92546-8010

Hemet, CA 92543

Telephone: (951) 766-2280; or

Fax: (951) 766-2299

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

I:\DL\JDAVES--LINE\Hauler\09-12-NEF Agreement\SHIT AGREEMENT - Union Waste Recovery, Inc.doc

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA AND
GREENWASTE RECOVERY, INC.**

EXHIBIT "D"

***ETHICAL STANDARDS FOR CONTRACTORS
SEEKING TO ENTER INTO AN AGREEMENT WITH
THE CITY OF SANTA CLARA, CALIFORNIA
Termination of Agreement for Certain Acts***

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor¹ does any of the following:

- a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
- b. Is convicted of a crime punishable as a felony involving dishonesty³;
- c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
- d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. If City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to the these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

4

Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files an petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

5

Loss of personnel deemed essential by the City for the successful performance of the obligations of the

Non-exclusive Franchise Agreement
Contractor to the City.

Rev: 09/08

Exhibit "D"

Page 2 of 2

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
GREENWASTE RECOVERY, INC.**

EXHIBIT "E"

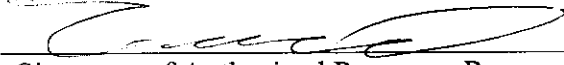
**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
(CITY OF SANTA CLARA)**

I, Frank Weigel, being first duly sworn, depose and say that I am the Chief Operating Officer of GreenWaste Recovery, Inc. and I hereby state that I have read and understand the language, titled "**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**" (herein "Ethical Standards") set forth in Exhibit "E". I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit "E" [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit "E" within the past five (5) years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

GREENWASTE RECOVERY, INC.

a Corporation

By: 
Signature of Authorized Person or Representative

Name: Frank Weigel

Title: Chief Operating Officer

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
GREENWASTE RECOVERY, INC.**

EXHIBIT "F"

WASTE AUDIT REPORTING REQUIREMENTS

The Waste Audit Report shall identify each customer by a customer identification (I.D.) number/letter. A matching list with the customer name and addresses must remain on file with the Contractor and available to the City upon request. The Contractor may submit a new waste audit to the City at any time, to reduce the franchise fees paid for those customers that qualify for a non-exclusive franchise fee reduction.

The Waste Audit must be performed and Certified by Statement of a qualified individual/firm experienced in the Waste Audit process. Typical qualifications of an individual or firm would be;

- ☐ Individual (s) with 4-year degree in Civil Engineering or Environmental Waste Management with experience in preparing Waste Audits would prepare and certify the report,
- ☐ Individuals with other type education and experience approved by the City, or
- ☐ Waste Audit Report prepared by a Consulting Engineering Firm experienced in preparing Waste Audits.

City shall review and determine adequacy and completeness of Waste Audit Report. Any comments will be submitted to Contractor for response, revision, update, and re-submittal of Report.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☐ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

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Signature of Document Signer No. 1

Signature of Document Signer No. 2 (If any)

State of California

County of Santa Clara

Subscribed and sworn to (or affirmed) before me on this

24th day of November, 2008, by
Date Month Year

(1) Frank Weigel
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) (.)

(and

(2) _____
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)

Signature

Lori A. Lachner
Signature of Notary Public

Place Notary Seal Above

*Though the information below is not required by law, it may prove
valuable to persons relying on the document and could prevent
fraudulent removal and reattachment of this form to another document.*

Further Description of Any Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT
OF SIGNER #1
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RIGHT THUMBPRINT
OF SIGNER #2
Top of thumb here

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
THE JONNA CORPORATION DBA PREMIER RECYCLE**

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
THE JONNA CORPORATION DBA PREMIER RECYCLE**

This Non-Exclusive Franchise Agreement ("Agreement") is made and entered into this day of _____, 2008 ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City"), and The Jonna Corporation dba Premier Recycle, a California corporation, with its principal place of business located at 348 Phelan Avenue, San Jose, CA 95112 ("Contractor"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement".

RECITALS

Whereas:

- A. This Agreement is entered into pursuant to Ordinance 1709 of the City of Santa Clara, entitled, "An Ordinance of the City of Santa Clara, California Repealing the Existing Chapter 13, Article III of 'The Code of the City of Santa Clara, California' in its entirety and adopting a new Chapter 13, Article III Pertaining to the 'Accumulation, Transportation and Disposal of Waste Matter'" passed and finally adopted by the City Council of the City of Santa Clara, California on the 6th day of January, 1998;
- B. All the provisions of Ordinance No. 1709, and the provisions of any other applicable City ordinance, are hereby referred to and made a part of this Agreement, as if the same were herein specifically set forth. Contractor agrees to faithfully perform each and every provision, term, condition, and covenant contained in this Agreement, addition to each and every provision, term, condition, and act of said Ordinance(s);
- C. Contractor is willing, able, and competent to provide collection and hauling services for collection of recyclable materials and/or the disposal of refuse generated from industrially zoned establishments in the City of Santa Clara; and
- D. It is deemed to be to the mutual advantage of City and the Contractor to provide these services for the industrial community, and to promote the health, safety, and welfare of all City residents.

In consideration of the above recitals and the following mutual covenants, agreements and obligations of the Parties, the City, and Contractor agree as follows:

AGREEMENT PROVISIONS AGREEMENT PROVISIONS

1. DEFINITION OF TERMS.

Wherever used in this Agreement, the following terms shall have the following meanings. The singular of any definition shall include the plural and the plural shall include the singular.

a. Commercial

The term "commercial" shall mean the designated zoning for commercial, professional office (OA), or general office (OG) development as shown on the official Zoning Map of the City of Santa Clara.

b. Industrial

The term "industrial" shall mean a parcel of real property designated as being located in a industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara.

c. Industrial Refuse

The term "industrial refuse" shall mean all classes of solid wastes generated in the industrial zoning districts of City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, and including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

d. Institutional

The term "institutional" shall mean the designated zoning for public (B) or quasi-public (B) development as shown on the official Zoning Map of the City of Santa Clara.

e. Planned Development

The term "planned development" shall mean designated zoning for planned developments (PD) as shown on the official Zoning Map of the City of Santa Clara. The determination of whether specific properties with PD Zoning shall be considered industrial or other type zoning shall be determined solely by the Director of Planning and Inspection.

f. Recoverable Material

The term "recoverable material" shall mean all materials that have the potential to be recovered from garbage containers and recycled. This material shall include: wood waste, white paper, news paper, mixed paper, cardboard, green waste, concrete, and scrap metals.

g. Recyclable Material

The term "recyclable material" shall mean newspapers, cardboard, clean cans, bottles, glass, scrap metal, and high grade paper, including Recoverable Material not contaminated by garbage or other waste materials.

h. Source Separated Recyclables

The term "source separated recyclables" shall mean recyclable material that is separated by the customer and placed into containers designated for recycling specific types of recoverable materials. The containers must have less than five percent (5%) contamination to be considered source separated and qualify for the reduced franchise fee.

i. Refuse

All classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

j. Material Recovery Facility (MRF)

The term "material recovery facility" shall mean a facility that processes refuse or mixed debris for the purpose of removing recoverable materials for recycling.

k. Residential

The term "residential" shall mean the designated zoning for residential (R) development as shown on the official Zoning Map of the City of Santa Clara, or other property used for residential purposes, regardless of its zoning designation.

l. Quarter

The term "quarter" shall mean a three (3) month period, or portion thereof, ending the last day of the following months: March, June, September, and December.

m. Waste Audit

The term "waste audit" shall mean Contractor periodically supplied certified report of amounts of recoverable material and garbage for specific customers which may be required by the City per terms and conditions described herein.

2. TERM OF AGREEMENT.

Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate at the end of day on December 31, 2011.

3. CONTRACTOR'S OBLIGATIONS AND HOURS OF OPERATION.

a. Obligation

City hereby grants to Contractor a nonexclusive right to provide the services required, and to furnish whatever labor, equipment, materials, and supplies which may be necessary, for the

purpose of collecting and picking up recyclable materials and industrial refuse, and to remove and transport said material to its destination from industrial zones in the City of Santa Clara for a period of time commencing on the Effective Date, subject to the termination provisions in Paragraph 13. Contractor agrees, in accordance with the covenants and agreements contained in this Agreement, to provide said services.

b. Restrictions

Contractor shall not charge for the collection and disposal of refuse or recyclables in commercial, institutional, and residential zoned property in the City unless authorized by separate franchise agreement with the City. Contractor may collect from these areas recoverable and recyclable material at no charge or fee to customer, including any hauling, bin rental, equipment rental, management, or similar service charge or fees. Any recoverable and recyclable material setout for collection must be setout in separately marked containers, and not contaminated by garbage.

c. Building Construction Exception

Exceptions in commercial, institutional, and residential zoned properties will be allowed for Contractor who has declared to City their primary business activity is building construction, and/or building demolition. Contractor must provide City with documentation that demonstrates that construction site clean-up services are being performed, with the cost of debris hauling and recycling itemized out for reporting purposes. In order to qualify for this exception, the construction contractor must utilize its own personnel to load the recoverable material into containers. This exemption does not apply for refuse. Contractor is required to report the amount of recyclable materials collected and pay franchise fees on the debris hauling/recycling portion of the charge to the customer.

d. Hours of Operation

All collections shall be made as quietly as possible, without unnecessary noise, disturbance, or commotion. Collections from any premises shall not be made prior to 4:00 a.m., and for areas that abut residential areas, collections shall not commence prior to 7:00 a.m.

4. NON-EXCLUSIVE FRANCHISE FEE PAYMENTS TO CITY.

Contractor shall pay to City a franchise fee ("Non-exclusive Franchise Fee") for the privilege of engaging in the business of collecting, hauling, and transporting recyclable material and industrial refuse to its destination. This Non-exclusive Franchise Fee shall be sixteen percent (16%) of the total gross billings for refuse that is not processed through a material recovery facility (MRF) that diverts at least thirty percent (30%), or source separated recyclable containers that have contamination levels greater than five percent (5%); ten percent (10%) of the total gross billings for refuse that is taken to a MRF that diverts at least thirty percent (30%); and three percent (3%) of the total gross billings for service of source separated recyclables with a contamination rate of less than five percent (5%). Bin and equipment rental charges are to be included in the gross billings for each industrial customer.

5. QUARTERLY AND ANNUAL REPORTING TO CITY.

Contractor shall file with the City's Director of Finance and forward a copy to the City's Director of Streets and Automotive Services, for each quarter's reporting period (or portion thereof), a written statement certifying the total gross billings for refuse and recycling issued during the period and total number of customers for which such statement is rendered and filed. Said statement shall be due within thirty (30) calendar days following the end of each quarter. Each statement shall be executed and submitted on a report form included herein as Exhibit "B" entitled "CERTIFICATE OF GROSS BILLINGS NON EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA, CALIFORNIA)".

Each certifying written statement filed with the City's Director of Finance shall be accompanied by the Non-exclusive Franchise Fee payment equal to the appropriate percentage of the gross billings certified. Non-exclusive Franchise Fee payments shall be delinquent on the thirty-first (31st) calendar day following the completion of the reporting period. Delinquent Non-exclusive Franchise Fee payments shall bear interest, commencing from the date of delinquency, at the rate of one and one quarter percent (1.25%) per month, or part thereof, simple interest in addition to penalties described in Section 21, herein. Failure to report and/or pay in a timely manner for more than one quarter, or failure to pay constitutes cause for termination of this Agreement per terms of Section 15b, of this Agreement.

A Contractor with a total reportable gross billings in excess of one hundred thousand (\$100,000) dollars per year shall submit annually, a report and an opinion by an independent certified public accountant that the Contractor's records were examined and the quarterly reports were a fair and accurate representation of the gross billings and Non-exclusive Franchise Fees owed the City. Said report shall be filed within one hundred (100) days after the end of the Contractor's fiscal year.

A Contractor providing recycling services without charge or compensation or for which customers are paid for materials must submit a quarterly report as described in Exhibit "B", listing the volume or tons diverted from customers within the City and certifying that no revenues were collected for recycling service or bin rental.

6. RECORDS.

Contractor shall keep and maintain full and complete records in Contractor's local office showing all City industrial refuse hauling and recyclable material collection business transacted. Such records shall be available in Contractor's offices for audit and inspection at any and all reasonable times upon request or demand of the City Manager or her/his designee. The records shall be maintained on the form entitled "RECORDS OF GROSS BILLINGS AND VOLUMES OF INDUSTRIAL REFUSE AND RECYCLABLE MATERIALS" and attached as Exhibit "A". A similar accounting format which provides the same type of information and summaries may be used if approved by the City Manager or her/his designee. The records must be kept on file for a period of three (3) years following the expiration or termination of this Agreement.

Failure to maintain adequate records and keep them on file for a period of three (3) years

following expiration or termination of this Agreement, whichever occurs first, shall be cause for the City to conduct, or hire an independent accounting firm to conduct, an extensive audit of Contractor's available records and Contractor's industrial customers' records to determine if additional Non-exclusive Franchise Fee payments are due to City. The costs of this audit shall be borne by Contractor. Prior to conducting this audit, City shall give Contractor written notice of deficiencies in record keeping and Contractor shall have thirty (30) calendar days to cure the default.

If the default is not cured within the time allotted, City shall have the right to conduct said audit and the cost of said audit, including additional Non-exclusive Franchise Fee payments plus interest at the rate of one and one quarter percent (1.25%) per month simple interest, shall be paid to City by Contractor within fifteen (15) days of receipt of audit report and billing by Contractor. Failure to maintain adequate records as required constitutes cause for termination of this Agreement, per terms of Section 15b, of this Agreement.

7. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that at all times herein mentioned, Contractor shall be deemed to be an independent contractor and that all work done hereunder shall be done and performed to the satisfaction of the City Manager who shall from time to time have the right, as circumstances require, to issue reasonable orders, directions, and instructions to Contractor having for their purpose the attainment of the results herein sought to be accomplished; provided however, that the means whereby such results are to be accomplished shall at all times be under the control of Contractor.

It is further agreed that neither Contractor, nor employee(s) of Contractor shall be deemed to be an agent or employee of City. Contractor, its agents and servants shall not hold themselves out to be the agents or employees of City in any manner whatsoever. It is further provided that Contractor shall not use the firm name containing the words "City" or "Santa Clara" or other words implying municipal ownership without approval of City Council of City.

8. COLLECTION EQUIPMENT - DESCRIPTION AND MARKING.

Contractor undertakes and agrees to carry out and perform the obligations of this Agreement in a sanitary, good, and workmanlike manner. All industrial refuse, and recyclable material collected by Contractor shall be transported in modern collection equipment, so constructed and so loaded that there will not be any leakage or dropping of industrial refuse or recyclable material therefrom. Said industrial refuse, when placed in any such vehicle and during its passage to its destination, shall be suitably enclosed so as to prevent spillage. Collection vehicles shall be uniformly painted and numbered, and shall have Contractor's name and the vehicle number painted in contrasting colors on each side and on the rear of the vehicle. Contractor's colors and color patterns on vehicles and bins shall be approved by City and be sufficiently different to be distinguishable from other non-exclusive franchise industrial refuse and recycling collection contractors. Collection vehicles shall be repainted at least once every forty-two (42) months, with touch-ups in the interim as required for aesthetics.

Contractor may furnish City-approved, detachable metal bins or containers to customers. In such event, Contractor shall be responsible for the general repair and upkeep of the bins or containers. Contractor shall repair, repaint or touch-up such bins or containers as required, but not less than

once every two years, and shall maintain such bins or containers in a sanitary non-leaking condition. Contractor's firm name and telephone number shall be indicated clearly on the surface of the bin or container. Bins designated for Recyclable Materials shall be additionally designated with the type of material to be placed therein.

9. OBEYANCE OF LAWS.

Contractor agrees to handle and transport to its destination all collected refuse and recyclable material from industrial establishments and to perform all of the services as required by the provisions of this Agreement, in a careful manner, and in accordance with all laws, ordinances and regulations of the United States, State of California, County of Santa Clara, and City of Santa Clara.

10. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit "C", Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the performance of Franchise Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit "C".

11. ASSIGNMENT.

This Agreement shall not be sublet or assigned, wholly or in part by operation of law or otherwise, without the written approval of the City Council of City.

12. OWNERSHIP AND DISPOSAL OF INDUSTRIAL WASTE AND REFUSE.

All industrial refuse and recyclable material collected by Contractor shall become the property of Contractor immediately upon the collection thereof, and shall immediately be removed and conveyed to its destination. Nothing in this Agreement shall be construed to grant permission to Contractor to dispose of collected industrial refuse at City's designated landfill site at City's preferred disposal rate for exclusive franchise refuse. Capacity at City's designated landfill site has been arranged, but not the disposal rate. Refuse collected by Contractor shall be transported to a legally permitted materials recovery facility, or a legally permitted disposal site outside the corporate limits of City.

13. SANTA CLARA COUNTY AB 939 IMPLEMENTATION FEES.

Contractor is responsible for paying all applicable Countywide AB 939 Implementation Fees on refuse collected in City, even if the refuse is transported to a disposal facility outside of Santa Clara County where the fee is not collected at the gate.

14. TERMINATION OF AGREEMENT.

This Agreement may be terminated under the following circumstances:

a. Contractual Termination Notice

Contractor is aware of the provisions in the California Public Resources Code. Subject to the provisions of Article 3 (Section 49520 et seq.), Chapter 6, Part 8, Division 30 (Entitled "Waste Management", Section 40000 et seq.) of the California Public Resources Code, and subject to earlier termination for cause as set forth in subparagraph b, below, this Agreement shall terminate as of December 31, 2011.

b. Termination for Cause

Notwithstanding the above, if at any time, in the opinion of the City Council, Contractor has failed to adequately perform the terms of this Agreement, City shall have the right and power to terminate this Agreement for cause pursuant to the provisions of Article VI (commencing with subsection 2-73) of Chapter 2 of "The Code of the City of Santa Clara, California" and said termination shall be treated procedurally as if it were a license revocation procedure). In determination of the question whether there has been any such noncompliance with this Agreement as to warrant the termination thereof, the decision of the City Council of the City of Santa Clara shall be final and binding.

c. Contractor Termination Without Cause

Contractor may terminate this Agreement without cause by giving City written notice. Within thirty (30) calendar days of written notice, Contractor shall file a certificate, attached as Exhibit "B", and pay all outstanding Non-exclusive Franchise Fee payments as required under Section 4 herein.

15. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by City and Contractor.

16. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability or perceived disability, religion, ethnic background, or marital status, in violation of state, or federal law.

17. HOLD HARMLESS/INDEMNIFICATION.

Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, or liability of any nature, including wrongful death, caused by or arising out of Contractor's, its officers, agents or employees negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on Contractor with respect to or in any way connected with the Services performed by Contractor under this Agreement, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom.

18. SERVICE OF NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Office of the City Clerk
Attn: Richard J. Mauck,
Director of Streets and Automotive Services
1500 Warburton Avenue
Santa Clara, California 95050
Phone Number: (408) 615-2051
Or by facsimile at: (408) 244-8071

And to Contractor addressed as follows:

The Jonna Corporation dba Premier Recycle
Attn: Robert Hill, President
348 Phelan Avenue
San Jose, CA 95112
Phone Number: (408) 297-7910
Or by facsimile at: (408) 297-7915

19. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

20. NOTICE OF FAILURE TO PERFORM, PENALTIES AND REMEDIES.

a. Notice of Failure to Perform

In addition to any other penalties or remedies available to City or provided under this Agreement or by law, City will give written notice to Contractor for failure to perform any other services and terms of this Agreement. In the notice, City shall also identify any allowable Contractor period of compliance.

b. Remedies

Contractor shall respond to City's written notice of failure to perform and provide written notice to City, within five (5) working days, on remedies, actions, corrections, and if necessary, a schedule of compliance.

c. Penalties for Failure to Perform

Contractor, upon failure to perform the following described terms and conditions of this agreement, shall be fined through the accounts receivable or administrative citation process, the following amounts:

1. Early collection of industrial areas abutting residential areas (Section 3c.)-
\$200.00 per occurrence;

2. Failure to make Non-Exclusive Franchise Fee payment within prescribed period (Section 6) - \$50.00 per day late first three calendar days; thereafter \$100.00 per day late, or one and one-quarter (1 1/4%) percent per month or part thereof of fee due whichever is greater.
3. Failure to submit fully completed quarterly report with payment, (Section 6) - \$50.00 per day late.
4. Failure to renew insurance, and submit Certificate of Insurance prior to expiration date (Section 11) - \$100.00 per day late.
5. Failure to maintain contactor name and phone number on containers - \$100.00 per occurrence.
6. Set out and collection of refuse container (cans, carts, bins, or debris boxes) in the City of Santa Clara outside of the area permitted by this Agreement (Section 3b) - The penalties annually shall be as follows;
 - A) First Violation - \$500.00 per occurrence per collection.
 - B) Second Violation Within a One-Year Period - \$750.00 per occurrence per collection.
 - C) Third Violation Within a One-Year Period - \$1,000.00 per occurrence per collection.
 - D) Fourth Violation Within a One-Year Period - \$1,000.00 per occurrence per collection and cause for Immediate Termination (per Section 14b) of Contractor's Agreement with City.

7. Unauthorized Bins, Boxes, or Containers

The City shall notify, in writing, any Contractor who violates Section 20.c(6) that the prompt and permanent removal of such Bin, Box, or Container from the place or premises is required. The City shall deliver such written notice by posting a copy of the notice prominently upon the Bin, Box, or Container. If the Bin, Box, or Container is identified with the name and telephone number of the solid waste Contractor servicing it, as is required in Section 9, the City shall endeavor to contact the Contractor by telephone or FAX. Failure to notify the Contractor by telephone or Fax shall not make the notice invalid.

The City may impound or cause to be impounded any such Bin, Box, or Container if the item is not permanently removed from the place or premises within the time set forth in the notice, which shall be not less than twenty-four (24) hours after posting of the notice, or not less than noon of the next business day after telephone or FAX notification, if any.

Any Contractor who violates Section 21.c(6) shall be liable to the City for all fines and charges levied in connection with the collection, transportation, storage, and handling of such Bin, Box, or Container by the City. Charges for the impounding and subsequent release of any unauthorized Bin, Box, or Container shall be \$200 plus \$50 per day storage cost. The Bin, Box, or Container impounded by the City shall be retrieved by the Contractor or his or her representative immediately after all applicable fines and charges have been paid. The City Manager may delegate to an authorized contractor the authority to impound unauthorized Bins, Boxes, and Containers.

Contractor will be required to refund any and all fees paid by a customer for the placement of unauthorized Bins, Boxes, and Containers.

8. Failure of Contractor to maintain Contractor's vehicles, bins, or containers in prescribed condition (Section 8) - \$25.00 per each day late based upon an agreed compliance schedule.
9. Failure to submit, if required, annual independent certified public accountant report and opinion Contractor's records and quarterly reports were fair and accurate (Section 6) - \$50.00 per each day late first month; \$100.00 per each day late thereafter.
10. Failure to submit any required Waste Audit reports (Exhibit F) entitled "Waste Audit Reporting Requirements": \$50 per each day late first 30 days; \$100 per day 30-60 days late; \$150 per day 60-90 days late. Immediate termination of Contract if report is over 90 days late. City shall provide written notice to Contractor after each thirty (30) day late period extended beyond the due date.

21. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- a. read the attached Exhibit "D", entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- b. execute the affidavit attached as Exhibit "E", entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

22. DISPOSAL REPORTING.

Contractor's quarterly reporting to City required in Section 6 shall correspond to quantities reported as required per State of California Regulatory Code Title 14, Division 7, Article 9.2, Disposal Reporting System. Any discrepancies noted by City in writing to Contractor shall be explained and documentation provided in a timely manner. Contractor shall provide quarterly report to City of all refuse and recoverable material taken to, and City material/refuse removed from, a Transfer Station (s) or processing center (s).

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

THE JONNA CORPORATION DBA PREMIER RECYCLE

a California corporation

By: _____

(Signature of Person executing the Agreement on behalf of Contractor)

Name: _____

ROBERT HILL

Title: _____

REPORTS

Local Address: _____

348 PIFFLIN AVE

SAN JOSE, CA 95112

Telephone _____

(408) 297-7910

Fax: _____

(408) 297-7915

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
THE JONNA CORPORATION DBA PREMIER RECYCLE**

"EXHIBIT "A"

**(EXAMPLE FORMAT) RECORDS OF GROSS BILLINGS
AND VOLUMES OF INDUSTRIAL REFUSE
AND RECYCLABLE MATERIALS**

I, _____, declare:
(Name)

A. I am the _____, of _____.
(Capacity: Treasurer, etc.) (Company Name)

B. For the quarter ending _____,
(March, June, September or December)

The gross billings and service levels for the indicated companies were as follows:

1. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

2. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

3. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

4. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

5. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE APPROPRIATE RECORDS AND BELIEVE THE INFORMATION TO BE TRUE, CORRECT AND COMPLETE.

Name

Title

Signature

Date

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
THE JONNA CORPORATION DBA PREMIER RECYCLE**

"EXHIBIT "B"

**(EXAMPLE FORMAT) CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL
FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND
RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)**

MAIL TO: (Certificate and Payment)
City of Santa Clara; Accounting Services
1500 Warburton Avenue; Santa Clara, CA 95050

cc: (Certificate Only)
City of Santa Clara; Director of Streets & Auto Services
1500 Warburton Avenue; Santa Clara, CA 95050

CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF
CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)

Company Name: _____ Calendar Year _____
Reporting Quarter: _____

Name: _____ Title: _____ Phone: _____

PART I- REPORTING QUARTER COLLECTION SUMMARY

A. Refuse Collection (including non-source separated mixed debris containers not taken to a MRF with a recovery rate of at least 30%)

1. Refuse Collected and Taken Directly to a Landfill with no Processing:

- a. Landfill used to dispose of refuse: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of refuse collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

<i>Roll-Off (Loose)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>	<i>Roll-Off (Compacted)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>
-----------------------------	------------------------	------------------------	----------------------	---------------------------------	------------------------	------------------------	----------------------

<i>Front-Loaded (Loose)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>
---------------------------------	------------------------	------------------------	----------------------

Total Weight of All Refuse	_____ lbs.	_____ tons
---------------------------------------	------------	------------

d. Total gross billings for refuse collection service for customers
(franchise fees will be 16% of gross billings) \$ _____

2. Mixed debris taken to a Materials Recovery Facility for Processing

- a. Material Recovery Facility (MRF) used: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of mixed debris collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off (Loose)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)	Roll-Off (Compacted)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)
Front-Loaded (Loose)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)	Total Weight of All Mixed Debris	lbs.		tons

d. MRF Recovery Rate: _____

e. Amount of material disposed of as refuse: _____ tons

f. Amount of material recycled: _____ tons

g. Total gross billings for all customer accounts whose waste was taken to a MRF with a recovery rate of 30% or greater (10% of gross billings) \$ _____

B. Collection of Source Separated Recyclable Materials (less than 5% contamination)

1. Number of customer accounts serviced in the City of Santa Clara: _____

2. Total quantity of recyclables collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off (Loose)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)	Roll-Off (Compacted)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)
Front-Loaded (Loose)	Quantity (c.y.)	lbs./cubic yard	Weight (lbs.)	Total Weight of All Recyclables	lbs.		tons

3. Total gross billings for all customer accounts receiving collection of source separated recyclable materials (3% of gross billings) \$ _____

PART II – FRANCHISE FEE PAYMENT CALCULATION

A. _____ x 16% = \$ _____
Gross Billings Amount from I-A.1(d)

B. _____ x 10% = \$ _____
Gross Billings Amount from I-A.2(g)

C. _____ x 3% = \$ _____
Gross Billings Amount from I-B.3

D. Total Franchise Fees For Reporting Quarter: \$ _____

I declare under penalty of perjury that I have examined the appropriate records and believe the information to be true, correct, and complete; that I will maintain these records in my office for review by the City, and that I am authorized to make and submit this certificate to the City of Santa Clara.

Executed on _____ Declarant Signature: _____

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
THE JONNA CORPORATION DBA PREMIER RECYCLE**

"EXHIBIT "C"

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of

such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request,

Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Street Department

c/o Insurance Data Services - Insurance Compliance

P.O. 12010-S2

or

151 North Lyon Avenue

Hemet, CA 92546-8010

Hemet, CA 92543

Telephone: (951) 766-2280; or

Fax: (951) 766-2299

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
THE JONNA CORPORATION DBA PREMIER RECYCLE**

EXHIBIT "D"

***ETHICAL STANDARDS FOR CONTRACTORS
SEEKING TO ENTER INTO AN AGREEMENT WITH
THE CITY OF SANTA CLARA, CALIFORNIA
Termination of Agreement for Certain Acts***

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor¹ does any of the following:

- a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
- b. Is convicted of a crime punishable as a felony involving dishonesty³;
- c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
- d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation) and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. If City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to the these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files an petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
THE JONNA CORPORATION DBA PREMIER RECYCLE**

EXHIBIT "E"

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
(CITY OF SANTA CLARA)**

I, Robert Hill, being first duly sworn, depose and say that I am the President of Premier Recycle and I hereby state that I have read and understand the language, titled "*ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*" (herein "Ethical Standards") set forth in Exhibit "E". I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit "E" [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit "E" within the past five (5) years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

THE JONNA CORPORATION DBA PREMIER RECYCLE

a Corporation

By: _____

Signature of Authorized Person or Representative

Name: Robert Hill

Title: President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
THE JONNA CORPORATION DBA PREMIER RECYCLE**

EXHIBIT "F"

WASTE AUDIT REPORTING REQUIREMENTS

The Waste Audit Report shall identify each customer by a customer identification (I.D.) number/letter. A matching list with the customer name and addresses must remain on file with the Contractor and available to the City upon request. The Contractor may submit a new waste audit to the **City** at any time, to reduce the franchise fees paid for those customers that qualify for a non-exclusive franchise fee reduction.

The Waste Audit must be performed and Certified by Statement of a qualified individual/firm experienced in the Waste Audit process. Typical qualifications of an individual or firm would be;

- ☐ Individual (s) with 4-year degree in Civil Engineering or Environmental Waste Management with experience in preparing Waste Audits would prepare and certify the report,
- ☐ Individuals with other type education and experience approved by the City, or
- ☐ Waste Audit Report prepared by a Consulting Engineering Firm experienced in preparing Waste Audits.

City shall review and determine adequacy and completeness of Waste Audit Report. Any comments will be submitted to Contractor for response, revision, update, and re-submittal of Report.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California

County of Santa Clara } ss.

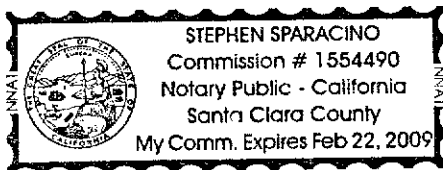
- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this

24th day of October, 2008, by
Date Month Year
(1) Robert Brock Hill
Name of Signer



- ☐ Personally known to me
☒ Proved to me on the basis of satisfactory evidence to be the person who appeared before me (1)(1)
(and

(2) _____
Name of Signer

- ☐ Personally known to me
☐ Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Stephen Sparacino
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

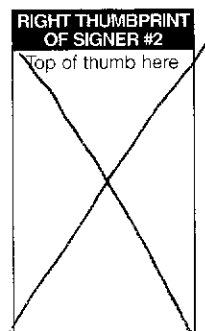
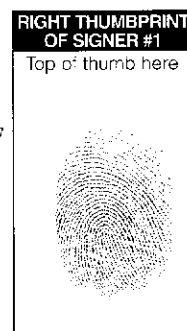
Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: affidavit of Compliance

Document Date: 10-24-08 Number of Pages: 1

Signer(s) Other Than Named Above: N/A



**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES**

BY AND BETWEEN

CITY OF SANTA CLARA, CALIFORNIA

AND

**LOS ALTOS GARBAGE COMPANY dba STEVENS CREEK
DISPOSAL AND RECYCLING**

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
LOS ALTOS GARBAGE COMPANY dba STEVENS CREEK DISPOSAL
AND RECYCLING**

This Non-Exclusive Franchise Agreement ("Agreement") is made and entered into this day of _____, 2008 ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City"), and Los Altos Garbage Company dba Stevens Creek Disposal and Recycling, a California corporation, with its principal place of business located at 650 Martin Avenue, Santa Clara, CA 95050 ("Contractor"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement".

RECITALS

Whereas:

- A. This Agreement is entered into pursuant to Ordinance 1709 of the City of Santa Clara, entitled, "An Ordinance of the City of Santa Clara, California Repealing the Existing Chapter 13, Article III of 'The Code of the City of Santa Clara, California' in its entirety and adopting a new Chapter 13, Article III Pertaining to the 'Accumulation, Transportation and Disposal of Waste Matter'" passed and finally adopted by the City Council of the City of Santa Clara, California on the 6th day of January, 1998;
- B. All the provisions of Ordinance No. 1709, and the provisions of any other applicable City ordinance, are hereby referred to and made a part of this Agreement, as if the same were herein specifically set forth. Contractor agrees to faithfully perform each and every provision, term, condition, and covenant contained in this Agreement, addition to each and every provision, term, condition, and act of said Ordinance(s);
- C. Contractor is willing, able, and competent to provide collection and hauling services for collection of recyclable materials and/or the disposal of refuse generated from industrially zoned establishments in the City of Santa Clara; and
- D. It is deemed to be to the mutual advantage of City and the Contractor to provide these services for the industrial community, and to promote the health, safety, and welfare of all City residents.

In consideration of the above recitals and the following mutual covenants, agreements and obligations of the Parties, the City, and Contractor agree as follows:

AGREEMENT PROVISIONS AGREEMENT PROVISIONS

1. DEFINITION OF TERMS.

Wherever used in this Agreement, the following terms shall have the following meanings. The singular of any definition shall include the plural and the plural shall include the singular.

a. Commercial

The term "commercial" shall mean the designated zoning for commercial, professional office (OA), or general office (OG) development as shown on the official Zoning Map of the City of Santa Clara.

b. Industrial

The term "industrial" shall mean a parcel of real property designated as being located in a industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara.

c. Industrial Refuse

The term "industrial refuse" shall mean all classes of solid wastes generated in the industrial zoning districts of City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, and including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

d. Institutional

The term "institutional" shall mean the designated zoning for public (B) or quasi-public (B) development as shown on the official Zoning Map of the City of Santa Clara.

e. Planned Development

The term "planned development" shall mean designated zoning for planned developments (PD) as shown on the official Zoning Map of the City of Santa Clara. The determination of whether specific properties with PD Zoning shall be considered industrial or other type zoning shall be determined solely by the Director of Planning and Inspection.

f. Recoverable Material

The term "recoverable material" shall mean all materials that have the potential to be recovered from garbage containers and recycled. This material shall include: wood waste, white paper, news paper, mixed paper, cardboard, green waste, concrete, and scrap metals.

g. Recyclable Material

The term "recyclable material" shall mean newspapers, cardboard, clean cans, bottles, glass, scrap metal, and high grade paper, including Recoverable Material not contaminated by garbage or other waste materials.

h. Source Separated Recyclables

The term "source separated recyclables" shall mean recyclable material that is separated by the customer and placed into containers designated for recycling specific types of recoverable materials. The containers must have less than five percent (5%) contamination to be considered source separated and qualify for the reduced franchise fee.

i. Refuse

All classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

j. Material Recovery Facility (MRF)

The term "material recovery facility" shall mean a facility that processes refuse or mixed debris for the purpose of removing recoverable materials for recycling.

k. Residential

The term "residential" shall mean the designated zoning for residential (R) development as shown on the official Zoning Map of the City of Santa Clara, or other property used for residential purposes, regardless of its zoning designation.

l. Quarter

The term "quarter" shall mean a three (3) month period, or portion thereof, ending the last day of the following months: March, June, September, and December.

m. Waste Audit

The term "waste audit" shall mean Contractor periodically supplied certified report of amounts of recoverable material and garbage for specific customers which may be required by the City per terms and conditions described herein.

2. TERM OF AGREEMENT.

Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate at the end of day on December 31, 2011.

3. CONTRACTOR'S OBLIGATIONS AND HOURS OF OPERATION.

a. Obligation

City hereby grants to Contractor a nonexclusive right to provide the services required, and to furnish whatever labor, equipment, materials, and supplies which may be necessary, for the

purpose of collecting and picking up recyclable materials and industrial refuse, and to remove and transport said material to its destination from industrial zones in the City of Santa Clara for a period of time commencing on the Effective Date, subject to the termination provisions in Paragraph 13. Contractor agrees, in accordance with the covenants and agreements contained in this Agreement, to provide said services.

b. Restrictions

Contractor shall not charge for the collection and disposal of refuse or recyclables in commercial, institutional, and residential zoned property in the City unless authorized by separate franchise agreement with the City. Contractor may collect from these areas recoverable and recyclable material at no charge or fee to customer, including any hauling, bin rental, equipment rental, management, or similar service charge or fees. Any recoverable and recyclable material setout for collection must be setout in separately marked containers, and not contaminated by garbage.

c. Building Construction Exception

Exceptions in commercial, institutional, and residential zoned properties will be allowed for Contractor who has declared to City their primary business activity is building construction, and/or building demolition. Contractor must provide City with documentation that demonstrates that construction site clean-up services are being performed, with the cost of debris hauling and recycling itemized out for reporting purposes. In order to qualify for this exception, the construction contractor must utilize its own personnel to load the recoverable material into containers. This exemption does not apply for refuse. Contractor is required to report the amount of recyclable materials collected and pay franchise fees on the debris hauling/recycling portion of the charge to the customer.

d. Hours of Operation

All collections shall be made as quietly as possible, without unnecessary noise, disturbance, or commotion. Collections from any premises shall not be made prior to 4:00 a.m., and for areas that abut residential areas, collections shall not commence prior to 7:00 a.m.

4. NON-EXCLUSIVE FRANCHISE FEE PAYMENTS TO CITY.

Contractor shall pay to City a franchise fee ("Non-exclusive Franchise Fee") for the privilege of engaging in the business of collecting, hauling, and transporting recyclable material and industrial refuse to its destination. This Non-exclusive Franchise Fee shall be sixteen percent (16%) of the total gross billings for refuse that is not processed through a material recovery facility (MRF) that diverts at least thirty percent (30%), or source separated recyclable containers that have contamination levels greater than five percent (5%); ten percent (10%) of the total gross billings for refuse that is taken to a MRF that diverts at least thirty percent (30%); and three percent (3%) of the total gross billings for service of source separated recyclables with a contamination rate of less than five percent (5%). Bin and equipment rental charges are to be included in the gross billings for each industrial customer.

5. QUARTERLY AND ANNUAL REPORTING TO CITY.

Contractor shall file with the City's Director of Finance and forward a copy to the City's Director of Streets and Automotive Services, for each quarter's reporting period (or portion thereof), a written statement certifying the total gross billings for refuse and recycling issued during the period and total number of customers for which such statement is rendered and filed. Said statement shall be due within thirty (30) calendar days following the end of each quarter. Each statement shall be executed and submitted on a report form included herein as Exhibit "B" entitled "CERTIFICATE OF GROSS BILLINGS NON EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA, CALIFORNIA)".

Each certifying written statement filed with the City's Director of Finance shall be accompanied by the Non-exclusive Franchise Fee payment equal to the appropriate percentage of the gross billings certified. Non-exclusive Franchise Fee payments shall be delinquent on the thirty-first (31st) calendar day following the completion of the reporting period. Delinquent Non-exclusive Franchise Fee payments shall bear interest, commencing from the date of delinquency, at the rate of one and one quarter percent (1.25%) per month, or part thereof, simple interest in addition to penalties described in Section 21, herein. Failure to report and/or pay in a timely manner for more than one quarter, or failure to pay constitutes cause for termination of this Agreement per terms of Section 15b, of this Agreement.

A Contractor with a total reportable gross billings in excess of one hundred thousand (\$100,000) dollars per year shall submit annually, a report and an opinion by an independent certified public accountant that the Contractor's records were examined and the quarterly reports were a fair and accurate representation of the gross billings and Non-exclusive Franchise Fees owed the City. Said report shall be filed within one hundred (100) days after the end of the Contractor's fiscal year.

A Contractor providing recycling services without charge or compensation or for which customers are paid for materials must submit a quarterly report as described in Exhibit "B", listing the volume or tons diverted from customers within the City and certifying that no revenues were collected for recycling service or bin rental.

6. RECORDS.

Contractor shall keep and maintain full and complete records in Contractor's local office showing all City industrial refuse hauling and recyclable material collection business transacted. Such records shall be available in Contractor's offices for audit and inspection at any and all reasonable times upon request or demand of the City Manager or her/his designee. The records shall be maintained on the form entitled "RECORDS OF GROSS BILLINGS AND VOLUMES OF INDUSTRIAL REFUSE AND RECYCLABLE MATERIALS" and attached as Exhibit "A". A similar accounting format which provides the same type of information and summaries may be used if approved by the City Manager or her/his designee. The records must be kept on file for a period of three (3) years following the expiration or termination of this Agreement.

Failure to maintain adequate records and keep them on file for a period of three (3) years

following expiration or termination of this Agreement, whichever occurs first, shall be cause for the City to conduct, or hire an independent accounting firm to conduct, an extensive audit of Contractor's available records and Contractor's industrial customers' records to determine if additional Non-exclusive Franchise Fee payments are due to City. The costs of this audit shall be borne by Contractor. Prior to conducting this audit, City shall give Contractor written notice of deficiencies in record keeping and Contractor shall have thirty (30) calendar days to cure the default.

If the default is not cured within the time allotted, City shall have the right to conduct said audit and the cost of said audit, including additional Non-exclusive Franchise Fee payments plus interest at the rate of one and one quarter percent (1.25%) per month simple interest, shall be paid to City by Contractor within fifteen (15) days of receipt of audit report and billing by Contractor. Failure to maintain adequate records as required constitutes cause for termination of this Agreement, per terms of Section 15b, of this Agreement.

7. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that at all times herein mentioned, Contractor shall be deemed to be an independent contractor and that all work done hereunder shall be done and performed to the satisfaction of the City Manager who shall from time to time have the right, as circumstances require, to issue reasonable orders, directions, and instructions to Contractor having for their purpose the attainment of the results herein sought to be accomplished; provided however, that the means whereby such results are to be accomplished shall at all times be under the control of Contractor.

It is further agreed that neither Contractor, nor employee(s) of Contractor shall be deemed to be an agent or employee of City. Contractor, its agents and servants shall not hold themselves out to be the agents or employees of City in any manner whatsoever. It is further provided that Contractor shall not use the firm name containing the words "City" or "Santa Clara" or other words implying municipal ownership without approval of City Council of City.

8. COLLECTION EQUIPMENT - DESCRIPTION AND MARKING.

Contractor undertakes and agrees to carry out and perform the obligations of this Agreement in a sanitary, good, and workmanlike manner. All industrial refuse, and recyclable material collected by Contractor shall be transported in modern collection equipment, so constructed and so loaded that there will not be any leakage or dropping of industrial refuse or recyclable material therefrom. Said industrial refuse, when placed in any such vehicle and during its passage to its destination, shall be suitably enclosed so as to prevent spillage. Collection vehicles shall be uniformly painted and numbered, and shall have Contractor's name and the vehicle number painted in contrasting colors on each side and on the rear of the vehicle. Contractor's colors and color patterns on vehicles and bins shall be approved by City and be sufficiently different to be distinguishable from other non-exclusive franchise industrial refuse and recycling collection contractors. Collection vehicles shall be repainted at least once every forty-two (42) months, with touch-ups in the interim as required for aesthetics.

Contractor may furnish City-approved, detachable metal bins or containers to customers. In such event, Contractor shall be responsible for the general repair and upkeep of the bins or containers. Contractor shall repair, repaint or touch-up such bins or containers as required, but not less than

once every two years, and shall maintain such bins or containers in a sanitary non-leaking condition. Contractor's firm name and telephone number shall be indicated clearly on the surface of the bin or container. Bins designated for Recyclable Materials shall be additionally designated with the type of material to be placed therein.

9. OBEYANCE OF LAWS.

Contractor agrees to handle and transport to its destination all collected refuse and recyclable material from industrial establishments and to perform all of the services as required by the provisions of this Agreement, in a careful manner, and in accordance with all laws, ordinances and regulations of the United States, State of California, County of Santa Clara, and City of Santa Clara.

10. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit "C", Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the performance of Franchise Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit "C".

11. ASSIGNMENT.

This Agreement shall not be sublet or assigned, wholly or in part by operation of law or otherwise, without the written approval of the City Council of City.

12. OWNERSHIP AND DISPOSAL OF INDUSTRIAL WASTE AND REFUSE.

All industrial refuse and recyclable material collected by Contractor shall become the property of Contractor immediately upon the collection thereof, and shall immediately be removed and conveyed to its destination. Nothing in this Agreement shall be construed to grant permission to Contractor to dispose of collected industrial refuse at City's designated landfill site at City's preferred disposal rate for exclusive franchise refuse. Capacity at City's designated landfill site has been arranged, but not the disposal rate. Refuse collected by Contractor shall be transported to a legally permitted materials recovery facility, or a legally permitted disposal site outside the corporate limits of City.

13. SANTA CLARA COUNTY AB 939 IMPLEMENTATION FEES.

Contractor is responsible for paying all applicable Countywide AB 939 Implementation Fees on refuse collected in City, even if the refuse is transported to a disposal facility outside of Santa Clara County where the fee is not collected at the gate.

14. TERMINATION OF AGREEMENT.

This Agreement may be terminated under the following circumstances:

a. Contractual Termination Notice

Contractor is aware of the provisions in the California Public Resources Code. Subject to the provisions of Article 3 (Section 49520 et seq.), Chapter 6, Part 8, Division 30 (Entitled "Waste Management", Section 40000 et seq.) of the California Public Resources Code, and subject to earlier termination for cause as set forth in subparagraph b, below, this Agreement shall terminate as of December 31, 2011.

b. Termination for Cause

Notwithstanding the above, if at any time, in the opinion of the City Council, Contractor has failed to adequately perform the terms of this Agreement, City shall have the right and power to terminate this Agreement for cause pursuant to the provisions of Article VI (commencing with subsection 2-73) of Chapter 2 of "The Code of the City of Santa Clara, California" and said termination shall be treated procedurally as if it were a license revocation procedure). In determination of the question whether there has been any such noncompliance with this Agreement as to warrant the termination thereof, the decision of the City Council of the City of Santa Clara shall be final and binding.

c. Contractor Termination Without Cause

Contractor may terminate this Agreement without cause by giving City written notice. Within thirty (30) calendar days of written notice, Contractor shall file a certificate, attached as Exhibit "B", and pay all outstanding Non-exclusive Franchise Fee payments as required under Section 4 herein.

15. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by City and Contractor.

16. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability or perceived disability, religion, ethnic background, or marital status, in violation of state, or federal law.

17. HOLD HARMLESS/INDEMNIFICATION.

Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, or liability of any nature, including wrongful death, caused by or arising out of Contractor's, its officers, agents or employees negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on Contractor with respect to or in any way connected with the Services performed by Contractor under this Agreement, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom.

18. SERVICE OF NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Office of the City Clerk
Attn: Richard J. Mauck,
Director of Streets and Automotive Services
1500 Warburton Avenue
Santa Clara, California 95050
Phone Number: (408) 615-2051
Or by facsimile at: (408) 244-8071

And to Contractor addressed as follows:

Los Altos Garbage Company dab Stevens Creek Disposal and Recycling
Attn: Mark Arsenault, General Manager
650 Martin Avenue
Santa Clara, CA 95050
Phone Number: (408) 392-3002
Or by facsimile at: (408) 392-3051

19. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

20. NOTICE OF FAILURE TO PERFORM, PENALTIES AND REMEDIES.

a. Notice of Failure to Perform

In addition to any other penalties or remedies available to City or provided under this Agreement or by law, City will give written notice to Contractor for failure to perform any other services and terms of this Agreement. In the notice, City shall also identify any allowable Contractor period of compliance.

b. Remedies

Contractor shall respond to City's written notice of failure to perform and provide written notice to City, within five (5) working days, on remedies, actions, corrections, and if necessary, a schedule of compliance.

c. Penalties for Failure to Perform

Contractor, upon failure to perform the following described terms and conditions of this agreement, shall be fined through the accounts receivable or administrative citation process, the following amounts:

1. Early collection of industrial areas abutting residential areas (Section 3c.)-
\$200.00 per occurrence;

2. Failure to make Non-Exclusive Franchise Fee payment within prescribed period (Section 6) - \$50.00 per day late first three calendar days; thereafter \$100.00 per day late, or one and one-quarter (1 1/4%) percent per month or part thereof of fee due whichever is greater.
3. Failure to submit fully completed quarterly report with payment, (Section 6) - \$50.00 per day late.
4. Failure to renew insurance, and submit Certificate of Insurance prior to expiration date (Section 11) - \$100.00 per day late.
5. Failure to maintain contactor name and phone number on containers - \$100.00 per occurrence.
6. Set out and collection of refuse container (cans, carts, bins, or debris boxes) in the City of Santa Clara outside of the area permitted by this Agreement (Section 3b) - The penalties annually shall be as follows;
 - A) First Violation - \$500.00 per occurrence per collection.
 - B) Second Violation Within a One-Year Period - \$750.00 per occurrence per collection.
 - C) Third Violation Within a One-Year Period - \$1,000.00 per occurrence per collection.
 - D) Fourth Violation Within a One-Year Period - \$1,000.00 per occurrence per collection and cause for Immediate Termination (per Section 14b) of Contractor's Agreement with City.

7. Unauthorized Bins, Boxes, or Containers

The City shall notify, in writing, any Contractor who violates Section 20.c(6) that the prompt and permanent removal of such Bin, Box, or Container from the place or premises is required. The City shall deliver such written notice by posting a copy of the notice prominently upon the Bin, Box, or Container. If the Bin, Box, or Container is identified with the name and telephone number of the solid waste Contractor servicing it, as is required in Section 9, the City shall endeavor to contact the Contractor by telephone or FAX. Failure to notify the Contractor by telephone or Fax shall not make the notice invalid.

The City may impound or cause to be impounded any such Bin, Box, or Container if the item is not permanently removed from the place or premises within the time set forth in the notice, which shall be not less than twenty-four (24) hours after posting of the notice, or not less than noon of the next business day after telephone or FAX notification, if any.

Any Contractor who violates Section 21.c(6) shall be liable to the City for all fines and charges levied in connection with the collection, transportation, storage, and handling of such Bin, Box, or Container by the City. Charges for the impounding and subsequent release of any unauthorized Bin, Box, or Container shall be \$200 plus \$50 per day storage cost. The Bin, Box, or Container impounded by the City shall be retrieved by the Contractor or his or her representative immediately after all applicable fines and charges have been paid. The City Manager may delegate to an authorized contractor the authority to impound unauthorized Bins, Boxes, and Containers.

Contractor will be required to refund any and all fees paid by a customer for the placement of unauthorized Bins, Boxes, and Containers.

8. Failure of Contractor to maintain Contractor's vehicles, bins, or containers in prescribed condition (Section 8) - \$25.00 per each day late based upon an agreed compliance schedule.
9. Failure to submit, if required, annual independent certified public accountant report and opinion Contractor's records and quarterly reports were fair and accurate (Section 6) - \$50.00 per each day late first month; \$100.00 per each day late thereafter.
10. Failure to submit any required Waste Audit reports (Exhibit F) entitled "Waste Audit Reporting Requirements": \$50 per each day late first 30 days; \$100 per day 30-60 days late; \$150 per day 60-90 days late. Immediate termination of Contract if report is over 90 days late. City shall provide written notice to Contractor after each thirty (30) day late period extended beyond the due date.

21. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- a. read the attached Exhibit "D", entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- b. execute the affidavit attached as Exhibit "E", entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

22. DISPOSAL REPORTING.

Contractor's quarterly reporting to City required in Section 6 shall correspond to quantities reported as required per State of California Regulatory Code Title 14, Division 7, Article 9.2, Disposal Reporting System. Any discrepancies noted by City in writing to Contractor shall be explained and documentation provided in a timely manner. Contractor shall provide quarterly report to City of all refuse and recoverable material taken to, and City material/refuse removed from, a Transfer Station (s) or processing center (s).

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager


ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

Los Altos Garbage Company dba Stevens Creek Disposal and Recycling
a California corporation

By: 
(Signature of Person executing the Agreement on behalf of Contractor)
Name: Mark Arseneault
Title: General Manager
Local Address: Stevens Creek Disposal & Recycling
1675 Rogers Ave
San Jose, CA 95112
Telephone: (408) 392-3002
Fax: (408) 392-3051

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
LOS ALTOS GARBAGE COMPANY DBA STEVENS CREEK DISPOSAL AND
RECYCLING**

"EXHIBIT "A"

**(EXAMPLE FORMAT) RECORDS OF GROSS BILLINGS
AND VOLUMES OF INDUSTRIAL REFUSE
AND RECYCLABLE MATERIALS**

I, _____, declare:
(Name)

A. I am the _____, of _____.
(Capacity: Treasurer, etc.) (Company Name)

B. For the quarter ending _____, _____.
(March, June, September or December)

The gross billings and service levels for the indicated companies were as follows:

1. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

2. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

3. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

4. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

5. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE APPROPRIATE RECORDS AND BELIEVE THE INFORMATION TO BE TRUE, CORRECT AND COMPLETE.

Name

Title

Signature

Date

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
LOS ALTOS GARBAGE COMPANY DBA STEVENS CREEK DISPOSAL AND RECYCLING**

"EXHIBIT "B"

**(EXAMPLE FORMAT) CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL
FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND
RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)**

MAIL TO: (Certificate and Payment)
City of Santa Clara; Accounting Services
1500 Warburton Avenue; Santa Clara, CA 95050

cc: (Certificate Only)
City of Santa Clara; Director of Streets & Auto Services
1500 Warburton Avenue; Santa Clara, CA 95050

CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF
CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)

Company Name: _____ Calendar Year _____
Reporting Quarter: _____

Name: _____ Title: _____ Phone: _____

PART I- REPORTING QUARTER COLLECTION SUMMARY

A. Refuse Collection (including non-source separated mixed debris containers not taken to a MRF with a recovery rate of at least 30%)

1. Refuse Collected and Taken Directly to a Landfill with no Processing:

- a. Landfill used to dispose of refuse: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of refuse collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Roll-Off
(Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Total Weight of _____
All Refuse lbs. tons

d. **Total gross billings for refuse collection service for customers**
(franchise fees will be 16% of gross billings) \$ _____

2. Mixed debris taken to a Materials Recovery Facility for Processing

- a. Material Recovery Facility (MRF) used: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of mixed debris collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Roll-Off
(Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

**Total Weight of
All Mixed Debris** lbs. tons

d. MRF Recovery Rate: _____

e. Amount of material disposed of as refuse: _____ tons

f. Amount of material recycled: _____ tons

g. **Total gross billings for all customer accounts whose waste was taken to a MRF with a recovery rate of 30% or greater (10% of gross billings)** \$ _____

B. Collection of Source Separated Recyclable Materials (less than 5% contamination)

1. Number of customer accounts serviced in the City of Santa Clara: _____

2. Total quantity of recyclables collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Roll-Off
(Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

**Total Weight of
All Recyclables** lbs. tons

3. **Total gross billings for all customer accounts receiving collection of source separated recyclable materials (3% of gross billings)** \$ _____

PART II – FRANCHISE FEE PAYMENT CALCULATION

A. _____ x 16% = \$ _____
Gross Billings Amount from I-A.1(d)

B. _____ x 10% = \$ _____
Gross Billings Amount from I-A.2(g)

C. _____ x 3% = \$ _____
Gross Billings Amount from I-B.3

D. **Total Franchise Fees For Reporting Quarter:** \$ _____

I declare under penalty of perjury that I have examined the appropriate records and believe the information to be true, correct, and complete; that I will maintain these records in my office for review by the City, and that I am authorized to make and submit this certificate to the City of Santa Clara.

Executed on _____

Declarant Signature: _____

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
LOS ALTOS GARBAGE COMPANY DBA STEVENS CREEK DISPOSAL AND RECYCLING**

"EXHIBIT "C"

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of

such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request,

Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Street Department

c/o Insurance Data Services - Insurance Compliance

P.O. 12010-S2

or

151 North Lyon Avenue

Hemet, CA 92546-8010

Hemet, CA 92543

Telephone: (951) 766-2280; or

Fax: (951) 766-2299

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

F:\Dave\DAVE'S FINET\Hauter\09-12 NIE Agreements\NIE AGREEMENT - Los Altos Garbage Company.doc

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA AND
LOS ALTOS GARBAGE COMPANY DBA STEVENS CREEK DISPOSAL AND
RECYCLING**

EXHIBIT "D"

***ETHICAL STANDARDS FOR CONTRACTORS
SEEKING TO ENTER INTO AN AGREEMENT WITH
THE CITY OF SANTA CLARA, CALIFORNIA
Termination of Agreement for Certain Acts***

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor¹ does any of the following:

- a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
- b. Is convicted of a crime punishable as a felony involving dishonesty³;
- c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
- d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation) and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. If City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to the these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

4

Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files an petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

5

Loss of personnel deemed essential by the City for the successful performance of the obligations of the

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
LOS ALTOS GARBAGE COMPANY DBA STEVENS CREEK DISPOSAL AND
RECYCLING**

EXHIBIT "E"

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
(CITY OF SANTA CLARA)**

I, Mark Arsenault, being first duly sworn, depose and say that I am the General Manager of Stevens Creek Disposal & Recycling and I hereby state that I have read and understand the language, titled "**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**" (herein "Ethical Standards") set forth in Exhibit "E". I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit "E" [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit "E" within the past five (5) years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

**LOS ALTOS GARBAGE COMPANY DBA STEVENS
CREEK DISPOSAL AND RECYCLING**

a Corporation

By: _____

Signature of Authorized Person or Representative

Name: Mark Arsenault

Title: General Manager

PLEASE SEE ATTACHED
CALIFORNIA NOTARY
ACKNOWLEDGEMENT
Aba

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

CALIFORNIA NOTARY ACKNOWLEDGEMENT

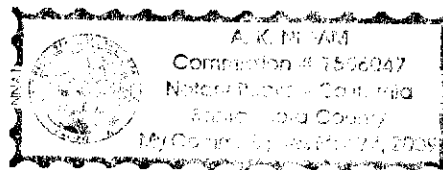
State of California

County of Santa Clara

On 30th October 2008 before me, A.K. Nigam, Notary Public
personally appeared - Mark Arsenault - who
proved to me on the basis of satisfactory evidence to be the person whose name is
subscribed to the within instrument and acknowledged to me that he executed the
same in his authorized capacity, and that by his signature on the instrument the
person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

Witness my hand and official seal.



Signature

A.K. Nigam

(Seal)

OPTIONAL

This certificate is attached to the document detailed below.

Title or Type Exhibit "E" - Non-Exclusive Franchise Agreement

Number of Pages one

Date of Document None

Other Signer(s) None

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
LOS ALTOS GARBAGE COMPANY DBA STEVENS CREEK DISPOSAL AND RECYCLING**

EXHIBIT "F"

WASTE AUDIT REPORTING REQUIREMENTS

The Waste Audit Report shall identify each customer by a customer identification (I.D.) number/letter. A matching list with the customer name and addresses must remain on file with the Contractor and available to the City upon request. The Contractor may submit a new waste audit to the City at any time, to reduce the franchise fees paid for those customers that qualify for a non-exclusive franchise fee reduction.

The Waste Audit must be performed and Certified by Statement of a qualified individual/firm experienced in the Waste Audit process. Typical qualifications of an individual or firm would be;

- ☐ Individual (s) with 4-year degree in Civil Engineering or Environmental Waste Management with experience in preparing Waste Audits would prepare and certify the report,
- ☐ Individuals with other type education and experience approved by the City, or
- ☐ Waste Audit Report prepared by a Consulting Engineering Firm experienced in preparing Waste Audits.

City shall review and determine adequacy and completeness of Waste Audit Report. Any comments will be submitted to Contractor for response, revision, update, and re-submittal of Report.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
MISSION TRAIL WASTE SYSTEMS**

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
MISSION TRAIL WASTE SYSTEMS**

This Non-Exclusive Franchise Agreement ("Agreement") is made and entered into this _____ day of _____, 2008 ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City"), and Mission Trail Waste Systems, a California corporation, with its principal place of business located at 1060 Richard Avenue, Santa Clara, CA 95050 ("Contractor"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement".

RECITALS

Whereas:

- A. This Agreement is entered into pursuant to Ordinance 1709 of the City of Santa Clara, entitled, "An Ordinance of the City of Santa Clara, California Repealing the Existing Chapter 13, Article III of 'The Code of the City of Santa Clara, California' in its entirety and adopting a new Chapter 13, Article III Pertaining to the 'Accumulation, Transportation and Disposal of Waste Matter'" passed and finally adopted by the City Council of the City of Santa Clara, California on the 6th day of January, 1998;
- B. All the provisions of Ordinance No. 1709, and the provisions of any other applicable City ordinance, are hereby referred to and made a part of this Agreement, as if the same were herein specifically set forth. Contractor agrees to faithfully perform each and every provision, term, condition, and covenant contained in this Agreement, addition to each and every provision, term, condition, and act of said Ordinance(s);
- C. Contractor is willing, able, and competent to provide collection and hauling services for collection of recyclable materials and/or the disposal of refuse generated from industrially zoned establishments in the City of Santa Clara; and
- D. It is deemed to be to the mutual advantage of City and the Contractor to provide these services for the industrial community, and to promote the health, safety, and welfare of all City residents.

In consideration of the above recitals and the following mutual covenants, agreements and obligations of the Parties, the City, and Contractor agree as follows:

AGREEMENT PROVISIONS AGREEMENT PROVISIONS

1. DEFINITION OF TERMS.

Wherever used in this Agreement, the following terms shall have the following meanings. The singular of any definition shall include the plural and the plural shall include the singular.

a. Commercial

The term "commercial" shall mean the designated zoning for commercial, professional office (OA), or general office (OG) development as shown on the official Zoning Map of the City of Santa Clara.

b. Industrial

The term "industrial" shall mean a parcel of real property designated as being located in a industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara.

c. Industrial Refuse

The term "industrial refuse" shall mean all classes of solid wastes generated in the industrial zoning districts of City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, and including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

d. Institutional

The term "institutional" shall mean the designated zoning for public (B) or quasi-public (B) development as shown on the official Zoning Map of the City of Santa Clara.

e. Planned Development

The term "planned development" shall mean designated zoning for planned developments (PD) as shown on the official Zoning Map of the City of Santa Clara. The determination of whether specific properties with PD Zoning shall be considered industrial or other type zoning shall be determined solely by the Director of Planning and Inspection.

f. Recoverable Material

The term "recoverable material" shall mean all materials that have the potential to be recovered from garbage containers and recycled. This material shall include: wood waste, white paper, news paper, mixed paper, cardboard, green waste, concrete, and scrap metals.

g. Recyclable Material

The term "recyclable material" shall mean newspapers, cardboard, clean cans, bottles, glass, scrap metal, and high grade paper, including Recoverable Material not contaminated by garbage or other waste materials.

h. Source Separated Recyclables

The term "source separated recyclables" shall mean recyclable material that is separated by the customer and placed into containers designated for recycling specific types of recoverable materials. The containers must have less than five percent (5%) contamination to be considered source separated and qualify for the reduced franchise fee.

i. Refuse

All classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

j. Material Recovery Facility (MRF)

The term "material recovery facility" shall mean a facility that processes refuse or mixed debris for the purpose of removing recoverable materials for recycling.

k. Residential

The term "residential" shall mean the designated zoning for residential (R) development as shown on the official Zoning Map of the City of Santa Clara, or other property used for residential purposes, regardless of its zoning designation.

l. Quarter

The term "quarter" shall mean a three (3) month period, or portion thereof, ending the last day of the following months: March, June, September, and December.

m. Waste Audit

The term "waste audit" shall mean Contractor periodically supplied certified report of amounts of recoverable material and garbage for specific customers which may be required by the City per terms and conditions described herein.

2. TERM OF AGREEMENT.

Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate at the end of day on December 31, 2011.

3. CONTRACTOR'S OBLIGATIONS AND HOURS OF OPERATION.

a. Obligation

City hereby grants to Contractor a nonexclusive right to provide the services required, and to furnish whatever labor, equipment, materials, and supplies which may be necessary, for the

purpose of collecting and picking up recyclable materials and industrial refuse, and to remove and transport said material to its destination from industrial zones in the City of Santa Clara for a period of time commencing on the Effective Date, subject to the termination provisions in Paragraph 13. Contractor agrees, in accordance with the covenants and agreements contained in this Agreement, to provide said services.

b. Restrictions

Contractor shall not charge for the collection and disposal of refuse or recyclables in commercial, institutional, and residential zoned property in the City unless authorized by separate franchise agreement with the City. Contractor may collect from these areas recoverable and recyclable material at no charge or fee to customer, including any hauling, bin rental, equipment rental, management, or similar service charge or fees. Any recoverable and recyclable material setout for collection must be setout in separately marked containers, and not contaminated by garbage.

c. Building Construction Exception

Exceptions in commercial, institutional, and residential zoned properties will be allowed for Contractor who has declared to City their primary business activity is building construction, and/or building demolition. Contractor must provide City with documentation that demonstrates that construction site clean-up services are being performed, with the cost of debris hauling and recycling itemized out for reporting purposes. In order to qualify for this exception, the construction contractor must utilize its own personnel to load the recoverable material into containers. This exemption does not apply for refuse. Contractor is required to report the amount of recyclable materials collected and pay franchise fees on the debris hauling/recycling portion of the charge to the customer.

d. Hours of Operation

All collections shall be made as quietly as possible, without unnecessary noise, disturbance, or commotion. Collections from any premises shall not be made prior to 4:00 a.m., and for areas that abut residential areas, collections shall not commence prior to 7:00 a.m.

4. NON-EXCLUSIVE FRANCHISE FEE PAYMENTS TO CITY.

Contractor shall pay to City a franchise fee ("Non-exclusive Franchise Fee") for the privilege of engaging in the business of collecting, hauling, and transporting recyclable material and industrial refuse to its destination. This Non-exclusive Franchise Fee shall be sixteen percent (16%) of the total gross billings for refuse that is not processed through a material recovery facility (MRF) that diverts at least thirty percent (30%), or source separated recyclable containers that have contamination levels greater than five percent (5%); ten percent (10%) of the total gross billings for refuse that is taken to a MRF that diverts at least thirty percent (30%); and three percent (3%) of the total gross billings for service of source separated recyclables with a contamination rate of less than five percent (5%). Bin and equipment rental charges are to be included in the gross billings for each industrial customer.

5. QUARTERLY AND ANNUAL REPORTING TO CITY.

Contractor shall file with the City's Director of Finance and forward a copy to the City's Director of Streets and Automotive Services, for each quarter's reporting period (or portion thereof), a written statement certifying the total gross billings for refuse and recycling issued during the period and total number of customers for which such statement is rendered and filed. Said statement shall be due within thirty (30) calendar days following the end of each quarter. Each statement shall be executed and submitted on a report form included herein as Exhibit "B" entitled "CERTIFICATE OF GROSS BILLINGS NON EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA, CALIFORNIA)".

Each certifying written statement filed with the City's Director of Finance shall be accompanied by the Non-exclusive Franchise Fee payment equal to the appropriate percentage of the gross billings certified. Non-exclusive Franchise Fee payments shall be delinquent on the thirty-first (31st) calendar day following the completion of the reporting period. Delinquent Non-exclusive Franchise Fee payments shall bear interest, commencing from the date of delinquency, at the rate of one and one quarter percent (1.25%) per month, or part thereof, simple interest in addition to penalties described in Section 21, herein. Failure to report and/or pay in a timely manner for more than one quarter, or failure to pay constitutes cause for termination of this Agreement per terms of Section 15b, of this Agreement.

A Contractor with a total reportable gross billings in excess of one hundred thousand (\$100,000) dollars per year shall submit annually, a report and an opinion by an independent certified public accountant that the Contractor's records were examined and the quarterly reports were a fair and accurate representation of the gross billings and Non-exclusive Franchise Fees owed the City. Said report shall be filed within one hundred (100) days after the end of the Contractor's fiscal year.

A Contractor providing recycling services without charge or compensation or for which customers are paid for materials must submit a quarterly report as described in Exhibit "B", listing the volume or tons diverted from customers within the City and certifying that no revenues were collected for recycling service or bin rental.

6. RECORDS.

Contractor shall keep and maintain full and complete records in Contractor's local office showing all City industrial refuse hauling and recyclable material collection business transacted. Such records shall be available in Contractor's offices for audit and inspection at any and all reasonable times upon request or demand of the City Manager or her/his designee. The records shall be maintained on the form entitled "RECORDS OF GROSS BILLINGS AND VOLUMES OF INDUSTRIAL REFUSE AND RECYCLABLE MATERIALS" and attached as Exhibit "A". A similar accounting format which provides the same type of information and summaries may be used if approved by the City Manager or her/his designee. The records must be kept on file for a period of three (3) years following the expiration or termination of this Agreement.

Failure to maintain adequate records and keep them on file for a period of three (3) years

following expiration or termination of this Agreement, whichever occurs first, shall be cause for the City to conduct, or hire an independent accounting firm to conduct, an extensive audit of Contractor's available records and Contractor's industrial customers' records to determine if additional Non-exclusive Franchise Fee payments are due to City. The costs of this audit shall be borne by Contractor. Prior to conducting this audit, City shall give Contractor written notice of deficiencies in record keeping and Contractor shall have thirty (30) calendar days to cure the default.

If the default is not cured within the time allotted, City shall have the right to conduct said audit and the cost of said audit, including additional Non-exclusive Franchise Fee payments plus interest at the rate of one and one quarter percent (1.25%) per month simple interest, shall be paid to City by Contractor within fifteen (15) days of receipt of audit report and billing by Contractor. Failure to maintain adequate records as required constitutes cause for termination of this Agreement, per terms of Section 15b, of this Agreement.

7. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that at all times herein mentioned, Contractor shall be deemed to be an independent contractor and that all work done hereunder shall be done and performed to the satisfaction of the City Manager who shall from time to time have the right, as circumstances require, to issue reasonable orders, directions, and instructions to Contractor having for their purpose the attainment of the results herein sought to be accomplished; provided however, that the means whereby such results are to be accomplished shall at all times be under the control of Contractor.

It is further agreed that neither Contractor, nor employee(s) of Contractor shall be deemed to be an agent or employee of City. Contractor, its agents and servants shall not hold themselves out to be the agents or employees of City in any manner whatsoever. It is further provided that Contractor shall not use the firm name containing the words "City" or "Santa Clara" or other words implying municipal ownership without approval of City Council of City.

8. COLLECTION EQUIPMENT - DESCRIPTION AND MARKING.

Contractor undertakes and agrees to carry out and perform the obligations of this Agreement in a sanitary, good, and workmanlike manner. All industrial refuse, and recyclable material collected by Contractor shall be transported in modern collection equipment, so constructed and so loaded that there will not be any leakage or dropping of industrial refuse or recyclable material therefrom. Said industrial refuse, when placed in any such vehicle and during its passage to its destination, shall be suitably enclosed so as to prevent spillage. Collection vehicles shall be uniformly painted and numbered, and shall have Contractor's name and the vehicle number painted in contrasting colors on each side and on the rear of the vehicle. Contractor's colors and color patterns on vehicles and bins shall be approved by City and be sufficiently different to be distinguishable from other non-exclusive franchise industrial refuse and recycling collection contractors. Collection vehicles shall be repainted at least once every forty-two (42) months, with touch-ups in the interim as required for aesthetics.

Contractor may furnish City-approved, detachable metal bins or containers to customers. In such event, Contractor shall be responsible for the general repair and upkeep of the bins or containers. Contractor shall repair, repaint or touch-up such bins or containers as required, but not less than

once every two years, and shall maintain such bins or containers in a sanitary non-leaking condition. Contractor's firm name and telephone number shall be indicated clearly on the surface of the bin or container. Bins designated for Recyclable Materials shall be additionally designated with the type of material to be placed therein.

9. OBEYANCE OF LAWS.

Contractor agrees to handle and transport to its destination all collected refuse and recyclable material from industrial establishments and to perform all of the services as required by the provisions of this Agreement, in a careful manner, and in accordance with all laws, ordinances and regulations of the United States, State of California, County of Santa Clara, and City of Santa Clara.

10. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit "C", Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the performance of Franchise Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit "C".

11. ASSIGNMENT.

This Agreement shall not be sublet or assigned, wholly or in part by operation of law or otherwise, without the written approval of the City Council of City.

12. OWNERSHIP AND DISPOSAL OF INDUSTRIAL WASTE AND REFUSE.

All industrial refuse and recyclable material collected by Contractor shall become the property of Contractor immediately upon the collection thereof, and shall immediately be removed and conveyed to its destination. Nothing in this Agreement shall be construed to grant permission to Contractor to dispose of collected industrial refuse at City's designated landfill site at City's preferred disposal rate for exclusive franchise refuse. Capacity at City's designated landfill site has been arranged, but not the disposal rate. Refuse collected by Contractor shall be transported to a legally permitted materials recovery facility, or a legally permitted disposal site outside the corporate limits of City.

13. SANTA CLARA COUNTY AB 939 IMPLEMENTATION FEES.

Contractor is responsible for paying all applicable Countywide AB 939 Implementation Fees on refuse collected in City, even if the refuse is transported to a disposal facility outside of Santa Clara County where the fee is not collected at the gate.

14. TERMINATION OF AGREEMENT.

This Agreement may be terminated under the following circumstances:

a. Contractual Termination Notice

Contractor is aware of the provisions in the California Public Resources Code. Subject to the provisions of Article 3 (Section 49520 et seq.), Chapter 6, Part 8, Division 30 (Entitled "Waste Management", Section 40000 et seq.) of the California Public Resources Code, and subject to earlier termination for cause as set forth in subparagraph b, below, this Agreement shall terminate as of December 31, 2011.

b. Termination for Cause

Notwithstanding the above, if at any time, in the opinion of the City Council, Contractor has failed to adequately perform the terms of this Agreement, City shall have the right and power to terminate this Agreement for cause pursuant to the provisions of Article VI (commencing with subsection 2-73) of Chapter 2 of "The Code of the City of Santa Clara, California" and said termination shall be treated procedurally as if it were a license revocation procedure). In determination of the question whether there has been any such noncompliance with this Agreement as to warrant the termination thereof, the decision of the City Council of the City of Santa Clara shall be final and binding.

c. Contractor Termination Without Cause

Contractor may terminate this Agreement without cause by giving City written notice. Within thirty (30) calendar days of written notice, Contractor shall file a certificate, attached as Exhibit "B", and pay all outstanding Non-exclusive Franchise Fee payments as required under Section 4 herein.

15. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by City and Contractor.

16. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability or perceived disability, religion, ethnic background, or marital status, in violation of state or federal law.

17. HOLD HARMLESS/INDEMNIFICATION.

Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, or liability of any nature, including wrongful death, caused by or arising out of Contractor's, its officers, agents or employees negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on Contractor with respect to or in any way connected with the Services performed by Contractor under this Agreement, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom.

18. SERVICE OF NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Office of the City Clerk
Attn: Richard J. Mauck,
Director of Streets and Automotive Services
1500 Warburton Avenue
Santa Clara, California 95050
Phone Number: (408) 615-2051
Or by facsimile at: (408) 244-8071

And to Contractor addressed as follows:

Mission Trail Waste Systems
Attn: Louie Pellegrini, President
1060 Richard Avenue
Santa Clara, CA 95050
Phone Number: (408) 727-5365
or by facsimile at (408) 727-7730

19. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

20. NOTICE OF FAILURE TO PERFORM, PENALTIES AND REMEDIES.

a. Notice of Failure to Perform

In addition to any other penalties or remedies available to City or provided under this Agreement or by law, City will give written notice to Contractor for failure to perform any other services and terms of this Agreement. In the notice, City shall also identify any allowable Contractor period of compliance.

b. Remedies

Contractor shall respond to City's written notice of failure to perform and provide written notice to City, within five (5) working days, on remedies, actions, corrections, and if necessary, a schedule of compliance.

c. Penalties for Failure to Perform

Contractor, upon failure to perform the following described terms and conditions of this agreement, shall be fined through the accounts receivable or administrative citation process, the following amounts:

1. Early collection of industrial areas abutting residential areas (Section 3c.)-
\$200.00 per occurrence;

2. Failure to make Non-Exclusive Franchise Fee payment within prescribed period (Section 6) - \$50.00 per day late first three calendar days; thereafter \$100.00 per day late, or one and one-quarter (1 1/4%) percent per month or part thereof of fee due whichever is greater.
3. Failure to submit fully completed quarterly report with payment, (Section 6) - \$50.00 per day late.
4. Failure to renew insurance, and submit Certificate of Insurance prior to expiration date (Section 11) - \$100.00 per day late.
5. Failure to maintain contactor name and phone number on containers - \$100.00 per occurrence.
6. Set out and collection of refuse container (cans, carts, bins, or debris boxes) in the City of Santa Clara outside of the area permitted by this Agreement (Section 3b) - The penalties annually shall be as follows;
 - A) First Violation - \$500.00 per occurrence per collection.
 - B) Second Violation Within a One-Year Period - \$750.00 per occurrence per collection.
 - C) Third Violation Within a One-Year Period - \$1,000.00 per occurrence per collection.
 - D) Fourth Violation Within a One-Year Period - \$1,000.00 per occurrence per collection and cause for Immediate Termination (per Section 14b) of Contractor's Agreement with City.

7. Unauthorized Bins, Boxes, or Containers

The City shall notify, in writing, any Contractor who violates Section 20.c(6) that the prompt and permanent removal of such Bin, Box, or Container from the place or premises is required. The City shall deliver such written notice by posting a copy of the notice prominently upon the Bin, Box, or Container. If the Bin, Box, or Container is identified with the name and telephone number of the solid waste Contractor servicing it, as is required in Section 9, the City shall endeavor to contact the Contractor by telephone or FAX. Failure to notify the Contractor by telephone or Fax shall not make the notice invalid.

The City may impound or cause to be impounded any such Bin, Box, or Container if the item is not permanently removed from the place or premises within the time set forth in the notice, which shall be not less than twenty-four (24) hours after posting of the notice, or not less than noon of the next business day after telephone or FAX notification, if any.

Any Contractor who violates Section 21.c(6) shall be liable to the City for all fines and charges levied in connection with the collection, transportation, storage, and handling of such Bin, Box, or Container by the City. Charges for the impounding and subsequent release of any unauthorized Bin, Box, or Container shall be \$200 plus \$50 per day storage cost. The Bin, Box, or Container impounded by the City shall be retrieved by the Contractor or his or her representative immediately after all applicable fines and charges have been paid. The City Manager may delegate to an authorized contractor the authority to impound unauthorized Bins, Boxes, and Containers.

Contractor will be required to refund any and all fees paid by a customer for the placement of unauthorized Bins, Boxes, and Containers.

8. Failure of Contractor to maintain Contractor's vehicles, bins, or containers in prescribed condition (Section 8) - \$25.00 per each day late based upon an agreed compliance schedule.
9. Failure to submit, if required, annual independent certified public accountant report and opinion Contractor's records and quarterly reports were fair and accurate (Section 6) - \$50.00 per each day late first month; \$100.00 per each day late thereafter.
10. Failure to submit any required Waste Audit reports (Exhibit F) entitled "Waste Audit Reporting Requirements": \$50 per each day late first 30 days; \$100 per day 30-60 days late; \$150 per day 60-90 days late. Immediate termination of Contract if report is over 90 days late. City shall provide written notice to Contractor after each thirty (30) day late period extended beyond the due date.

21. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- a. read the attached Exhibit "D", entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- b. execute the affidavit attached as Exhibit "E", entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

22. DISPOSAL REPORTING.

Contractor's quarterly reporting to City required in Section 6 shall correspond to quantities reported as required per State of California Regulatory Code Title 14, Division 7, Article 9.2, Disposal Reporting System. Any discrepancies noted by City in writing to Contractor shall be explained and documentation provided in a timely manner. Contractor shall provide quarterly report to City of all refuse and recoverable material taken to, and City material/refuse removed from, a Transfer Station (s) or processing center (s).

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

MISSION TRAIL WASTE SYSTEMS

a California corporation

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)
Name: _____
Title: _____
Local Address: _____
Mission Trail Waste Systems
1060 Richard Ave.
Santa Clara, CA 95050-2010
Telephone: (408) 727-5365
Fax: (408) 727-7730

\\D:\ms\DAVIDS-1\NLIF\Hatch\09-12 NLIF agreement\NLIF AGREEMENT\MINT-Mission Trail Waste Systems.doc

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
MISSION TRAIL WASTE SYSTEMS**

“EXHIBIT “A”

**(EXAMPLE FORMAT) RECORDS OF GROSS BILLINGS
AND VOLUMES OF INDUSTRIAL REFUSE
AND RECYCLABLE MATERIALS**

I, _____, declare:
(Name)

A. I am the _____, of _____.
(Capacity: Treasurer, etc.) (Company Name)

B. For the quarter ending _____, _____.
(March, June, September or December)

The gross billings and service levels for the indicated companies were as follows:

1. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

2. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

3. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

4. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

5. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE APPROPRIATE RECORDS AND BELIEVE THE INFORMATION TO BE TRUE, CORRECT AND COMPLETE.

Name

Title

Signature

Date

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
MISSION TRAIL WASTE SYSTEMS**

"EXHIBIT "B"

**(EXAMPLE FORMAT) CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE
INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME
COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF
SANTA CLARA)**

MAIL TO: (Certificate and Payment)
City of Santa Clara; Accounting Services
1500 Warburton Avenue; Santa Clara, CA 95050

cc: (Certificate Only)
City of Santa Clara; Director of Streets & Auto Services
1500 Warburton Avenue; Santa Clara, CA 95050

CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF
CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)

Company Name: _____ Calendar Year _____
Reporting Quarter: _____

Name: _____ Title: _____ Phone: _____

PART I- REPORTING QUARTER COLLECTION SUMMARY

A. Refuse Collection (including non-source separated mixed debris containers not taken to a MRF with a recovery rate of at least 30%)

1. Refuse Collected and Taken Directly to a Landfill with no Processing:

- a. Landfill used to dispose of refuse: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of refuse collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

<i>Roll-Off (Loose)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>	<i>Roll-Off (Compacted)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>
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<i>Front-Loaded (Loose)</i>	<u>Quantity (c.y.)</u>	<u>lbs./cubic yard</u>	<u>Weight (lbs.)</u>	Total Weight of All Refuse	<u>lbs.</u>	<u>tons</u>
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d. Total gross billings for refuse collection service for customers
(franchise fees will be 16% of gross billings) \$ _____

2. Mixed debris taken to a Materials Recovery Facility for Processing

- a. Material Recovery Facility (MRF) used: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of mixed debris collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Roll-Off (Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Total Weight of All Mixed Debris lbs. tons

d. MRF Recovery Rate: _____

e. Amount of material disposed of as refuse: _____ tons

f. Amount of material recycled: _____ tons

g. Total gross billings for all customer accounts whose waste was taken to a MRF with a recovery rate of 30% or greater (10% of gross billings) \$ _____

B. Collection of Source Separated Recyclable Materials (less than 5% contamination)

1. Number of customer accounts serviced in the City of Santa Clara: _____

2. Total quantity of recyclables collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Roll-Off (Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Total Weight of All Recyclables lbs. tons

3. Total gross billings for all customer accounts receiving collection of source separated recyclable materials (3% of gross billings) \$ _____

PART II – FRANCHISE FEE PAYMENT CALCULATION

A. _____ x 16% = \$ _____
Gross Billings Amount from I-A.1(d)

B. _____ x 10% = \$ _____
Gross Billings Amount from I-A.2(g)

C. _____ x 3% = \$ _____
Gross Billings Amount from I-B.3

D. Total Franchise Fees For Reporting Quarter: \$ _____

I declare under penalty of perjury that I have examined the appropriate records and believe the information to be true, correct, and complete; that I will maintain these records in my office for review by the City, and that I am authorized to make and submit this certificate to the City of Santa Clara.

Executed on _____ Declarant Signature: _____

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
MISSION TRAIL WASTE SYSTEMS**

"EXHIBIT "C"

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of

such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request,

Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Street Department

c/o Insurance Data Services - Insurance Compliance

P.O. 12010-S2

or

151 North Lyon Avenue

Hemet, CA 92546-8010

Hemet, CA 92543

Telephone: (951) 766-2280; or

Fax: (951) 766-2299

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA AND
MISSION TRAIL WASTE SYSTEMS**

EXHIBIT "D"

***ETHICAL STANDARDS FOR CONTRACTORS
SEEKING TO ENTER INTO AN AGREEMENT WITH
THE CITY OF SANTA CLARA, CALIFORNIA
Termination of Agreement for Certain Acts***

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor¹ does any of the following:

- a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
- b. Is convicted of a crime punishable as a felony involving dishonesty³;
- c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
- d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director,

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation) and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. If City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to the these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files an petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
MISSION TRAIL WASTE SYSTEMS**

EXHIBIT "E"

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
(CITY OF SANTA CLARA)**

I, Louie Pellegrini, being first duly sworn, depose and say that I am the President of Mission Trail Waste Systems and I hereby state that I have read and understand the language, titled "**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**" (herein "Ethical Standards") set forth in Exhibit "E". I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit "E" [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit "E" within the past five (5) years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

MISSION TRAIL WASTE SYSTEMS
a Corporation

By: _____

Signature of Authorized Person or Representative

Name: Louie Pellegrini

Title: President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
MISSION TRAIL WASTE SYSTEMS**

EXHIBIT "F"

WASTE AUDIT REPORTING REQUIREMENTS

The Waste Audit Report shall identify each customer by a customer identification (I.D.) number/letter. A matching list with the customer name and addresses must remain on file with the Contractor and available to the City upon request. The Contractor may submit a new waste audit to the City at any time, to reduce the franchise fees paid for those customers that qualify for a non-exclusive franchise fee reduction.

The Waste Audit must be performed and Certified by Statement of a qualified individual/firm experienced in the Waste Audit process. Typical qualifications of an individual or firm would be;

- ☐ Individual (s) with 4-year degree in Civil Engineering or Environmental Waste Management with experience in preparing Waste Audits would prepare and certify the report,
- ☐ Individuals with other type education and experience approved by the City, or
- ☐ Waste Audit Report prepared by a Consulting Engineering Firm experienced in preparing Waste Audits.

City shall review and determine adequacy and completeness of Waste Audit Report. Any comments will be submitted to Contractor for response, revision, update, and re-submittal of Report.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California

County of Santa Clara } ss.

- ☐ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
Signature of Document Signer No. 1 _____
Signature of Document Signer No. 2 (if any) _____

Subscribed and sworn to (or affirmed) before me on this

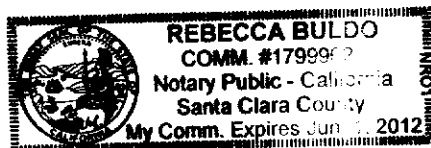
21 day of October, 2008, by
Date Month Year

(1) Louie Pellegrini
Name of Signer

- ☒ Personally known to me
☐ Proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) (.)
(and

(2) _____
Name of Signer

- ☐ Personally known to me
☐ Proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)



Rebecca Buldo
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Non-Exclusive Franchise Agreement - Santa Clara

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT
OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT
OF SIGNER #2
Top of thumb here

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
PACIFIC COAST RECYCLING, INC.**

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
PACIFIC COAST RECYCLING, INC.**

This Non-Exclusive Franchise Agreement ("Agreement") is made and entered into this _____ day of _____, 2008 ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City"), and Pacific Coast Recycling, Inc., a California corporation, with its principal place of business located at 5895 Obata Way, Gilroy, CA 95020 ("Contractor"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement".

RECITALS

Whereas:

- A. This Agreement is entered into pursuant to Ordinance 1709 of the City of Santa Clara, entitled, "An Ordinance of the City of Santa Clara, California Repealing the Existing Chapter 13, Article III of 'The Code of the City of Santa Clara, California' in its entirety and adopting a new Chapter 13, Article III Pertaining to the 'Accumulation, Transportation and Disposal of Waste Matter'" passed and finally adopted by the City Council of the City of Santa Clara, California on the 6th day of January, 1998;
- B. All the provisions of Ordinance No. 1709, and the provisions of any other applicable City ordinance, are hereby referred to and made a part of this Agreement, as if the same were herein specifically set forth. Contractor agrees to faithfully perform each and every provision, term, condition, and covenant contained in this Agreement, addition to each and every provision, term, condition, and act of said Ordinance(s);
- C. Contractor is willing, able, and competent to provide collection and hauling services for collection of recyclable materials and/or the disposal of refuse generated from industrially zoned establishments in the City of Santa Clara; and
- D. It is deemed to be to the mutual advantage of City and the Contractor to provide these services for the industrial community, and to promote the health, safety, and welfare of all City residents.

In consideration of the above recitals and the following mutual covenants, agreements and obligations of the Parties, the City, and Contractor agree as follows:

AGREEMENT PROVISIONS AGREEMENT PROVISIONS

1. DEFINITION OF TERMS.

Wherever used in this Agreement, the following terms shall have the following meanings. The singular of any definition shall include the plural and the plural shall include the singular.

a. Commercial

The term "commercial" shall mean the designated zoning for commercial, professional office (OA), or general office (OG) development as shown on the official Zoning Map of the City of Santa Clara.

b. Industrial

The term "industrial" shall mean a parcel of real property designated as being located in a industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara.

c. Industrial Refuse

The term "industrial refuse" shall mean all classes of solid wastes generated in the industrial zoning districts of City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, and including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

d. Institutional

The term "institutional" shall mean the designated zoning for public (B) or quasi-public (B) development as shown on the official Zoning Map of the City of Santa Clara.

e. Planned Development

The term "planned development" shall mean designated zoning for planned developments (PD) as shown on the official Zoning Map of the City of Santa Clara. The determination of whether specific properties with PD Zoning shall be considered industrial or other type zoning shall be determined solely by the Director of Planning and Inspection.

f. Recoverable Material

The term "recoverable material" shall mean all materials that have the potential to be recovered from garbage containers and recycled. This material shall include: wood waste, white paper, news paper, mixed paper, cardboard, green waste, concrete, and scrap metals.

g. Recyclable Material

The term "recyclable material" shall mean newspapers, cardboard, clean cans, bottles, glass, scrap metal, and high grade paper, including Recoverable Material not contaminated by garbage or other waste materials.

h. Source Separated Recyclables

The term "source separated recyclables" shall mean recyclable material that is separated by the customer and placed into containers designated for recycling specific types of recoverable materials. The containers must have less than five percent (5%) contamination to be considered source separated and qualify for the reduced franchise fee.

i. Refuse

All classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

j. Material Recovery Facility (MRF)

The term "material recovery facility" shall mean a facility that processes refuse or mixed debris for the purpose of removing recoverable materials for recycling.

k. Residential

The term "residential" shall mean the designated zoning for residential (R) development as shown on the official Zoning Map of the City of Santa Clara, or other property used for residential purposes, regardless of its zoning designation.

l. Quarter

The term "quarter" shall mean a three (3) month period, or portion thereof, ending the last day of the following months: March, June, September, and December.

m. Waste Audit

The term "waste audit" shall mean Contractor periodically supplied certified report of amounts of recoverable material and garbage for specific customers which may be required by the City per terms and conditions described herein.

2. TERM OF AGREEMENT.

Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate at the end of day on December 31, 2011.

3. CONTRACTOR'S OBLIGATIONS AND HOURS OF OPERATION.

a. Obligation

City hereby grants to Contractor a nonexclusive right to provide the services required, and to furnish whatever labor, equipment, materials, and supplies which may be necessary, for the

purpose of collecting and picking up recyclable materials and industrial refuse, and to remove and transport said material to its destination from industrial zones in the City of Santa Clara for a period of time commencing on the Effective Date, subject to the termination provisions in Paragraph 13. Contractor agrees, in accordance with the covenants and agreements contained in this Agreement, to provide said services.

b. Restrictions

Contractor shall not charge for the collection and disposal of refuse or recyclables in commercial, institutional, and residential zoned property in the City unless authorized by separate franchise agreement with the City. Contractor may collect from these areas recoverable and recyclable material at no charge or fee to customer, including any hauling, bin rental, equipment rental, management, or similar service charge or fees. Any recoverable and recyclable material setout for collection must be setout in separately marked containers, and not contaminated by garbage.

c. Building Construction Exception

Exceptions in commercial, institutional, and residential zoned properties will be allowed for Contractor who has declared to City their primary business activity is building construction, and/or building demolition. Contractor must provide City with documentation that demonstrates that construction site clean-up services are being performed, with the cost of debris hauling and recycling itemized out for reporting purposes. In order to qualify for this exception, the construction contractor must utilize its own personnel to load the recoverable material into containers. This exemption does not apply for refuse. Contractor is required to report the amount of recyclable materials collected and pay franchise fees on the debris hauling/recycling portion of the charge to the customer.

d. Hours of Operation

All collections shall be made as quietly as possible, without unnecessary noise, disturbance, or commotion. Collections from any premises shall not be made prior to 4:00 a.m., and for areas that abut residential areas, collections shall not commence prior to 7:00 a.m.

4. NON-EXCLUSIVE FRANCHISE FEE PAYMENTS TO CITY.

Contractor shall pay to City a franchise fee ("Non-exclusive Franchise Fee") for the privilege of engaging in the business of collecting, hauling, and transporting recyclable material and industrial refuse to its destination. This Non-exclusive Franchise Fee shall be sixteen percent (16%) of the total gross billings for refuse that is not processed through a material recovery facility (MRF) that diverts at least thirty percent (30%), or source separated recyclable containers that have contamination levels greater than five percent (5%); ten percent (10%) of the total gross billings for refuse that is taken to a MRF that diverts at least thirty percent (30%); and three percent (3%) of the total gross billings for service of source separated recyclables with a contamination rate of less than five percent (5%). Bin and equipment rental charges are to be included in the gross billings for each industrial customer.

5. QUARTERLY AND ANNUAL REPORTING TO CITY.

Contractor shall file with the City's Director of Finance and forward a copy to the City's Director of Streets and Automotive Services, for each quarter's reporting period (or portion thereof), a written statement certifying the total gross billings for refuse and recycling issued during the period and total number of customers for which such statement is rendered and filed. Said statement shall be due within thirty (30) calendar days following the end of each quarter. Each statement shall be executed and submitted on a report form included herein as Exhibit "B" entitled "CERTIFICATE OF GROSS BILLINGS NON EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA, CALIFORNIA)".

Each certifying written statement filed with the City's Director of Finance shall be accompanied by the Non-exclusive Franchise Fee payment equal to the appropriate percentage of the gross billings certified. Non-exclusive Franchise Fee payments shall be delinquent on the thirty-first (31st) calendar day following the completion of the reporting period. Delinquent Non-exclusive Franchise Fee payments shall bear interest, commencing from the date of delinquency, at the rate of one and one quarter percent (1.25%) per month, or part thereof, simple interest in addition to penalties described in Section 21, herein. Failure to report and/or pay in a timely manner for more than one quarter, or failure to pay constitutes cause for termination of this Agreement per terms of Section 15b, of this Agreement.

A Contractor with a total reportable gross billings in excess of one hundred thousand (\$100,000) dollars per year shall submit annually, a report and an opinion by an independent certified public accountant that the Contractor's records were examined and the quarterly reports were a fair and accurate representation of the gross billings and Non-exclusive Franchise Fees owed the City. Said report shall be filed within one hundred (100) days after the end of the Contractor's fiscal year.

A Contractor providing recycling services without charge or compensation or for which customers are paid for materials must submit a quarterly report as described in Exhibit "B", listing the volume or tons diverted from customers within the City and certifying that no revenues were collected for recycling service or bin rental.

6. RECORDS.

Contractor shall keep and maintain full and complete records in Contractor's local office showing all City industrial refuse hauling and recyclable material collection business transacted. Such records shall be available in Contractor's offices for audit and inspection at any and all reasonable times upon request or demand of the City Manager or her/his designee. The records shall be maintained on the form entitled "RECORDS OF GROSS BILLINGS AND VOLUMES OF INDUSTRIAL REFUSE AND RECYCLABLE MATERIALS" and attached as Exhibit "A". A similar accounting format which provides the same type of information and summaries may be used if approved by the City Manager or her/his designee. The records must be kept on file for a period of three (3) years following the expiration or termination of this Agreement.

Failure to maintain adequate records and keep them on file for a period of three (3) years

following expiration or termination of this Agreement, whichever occurs first, shall be cause for the City to conduct, or hire an independent accounting firm to conduct, an extensive audit of Contractor's available records and Contractor's industrial customers' records to determine if additional Non-exclusive Franchise Fee payments are due to City. The costs of this audit shall be borne by Contractor. Prior to conducting this audit, City shall give Contractor written notice of deficiencies in record keeping and Contractor shall have thirty (30) calendar days to cure the default.

If the default is not cured within the time allotted, City shall have the right to conduct said audit and the cost of said audit, including additional Non-exclusive Franchise Fee payments plus interest at the rate of one and one quarter percent (1.25%) per month simple interest, shall be paid to City by Contractor within fifteen (15) days of receipt of audit report and billing by Contractor. Failure to maintain adequate records as required constitutes cause for termination of this Agreement, per terms of Section 15b, of this Agreement.

7. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that at all times herein mentioned, Contractor shall be deemed to be an independent contractor and that all work done hereunder shall be done and performed to the satisfaction of the City Manager who shall from time to time have the right, as circumstances require, to issue reasonable orders, directions, and instructions to Contractor having for their purpose the attainment of the results herein sought to be accomplished; provided however, that the means whereby such results are to be accomplished shall at all times be under the control of Contractor.

It is further agreed that neither Contractor, nor employee(s) of Contractor shall be deemed to be an agent or employee of City. Contractor, its agents and servants shall not hold themselves out to be the agents or employees of City in any manner whatsoever. It is further provided that Contractor shall not use the firm name containing the words "City" or "Santa Clara" or other words implying municipal ownership without approval of City Council of City.

8. COLLECTION EQUIPMENT - DESCRIPTION AND MARKING.

Contractor undertakes and agrees to carry out and perform the obligations of this Agreement in a sanitary, good, and workmanlike manner. All industrial refuse, and recyclable material collected by Contractor shall be transported in modern collection equipment, so constructed and so loaded that there will not be any leakage or dropping of industrial refuse or recyclable material therefrom. Said industrial refuse, when placed in any such vehicle and during its passage to its destination, shall be suitably enclosed so as to prevent spillage. Collection vehicles shall be uniformly painted and numbered, and shall have Contractor's name and the vehicle number painted in contrasting colors on each side and on the rear of the vehicle. Contractor's colors and color patterns on vehicles and bins shall be approved by City and be sufficiently different to be distinguishable from other non-exclusive franchise industrial refuse and recycling collection contractors. Collection vehicles shall be repainted at least once every forty-two (42) months, with touch-ups in the interim as required for aesthetics.

Contractor may furnish City-approved, detachable metal bins or containers to customers. In such event, Contractor shall be responsible for the general repair and upkeep of the bins or containers. Contractor shall repair, repaint or touch-up such bins or containers as required, but not less than

once every two years, and shall maintain such bins or containers in a sanitary non-leaking condition. Contractor's firm name and telephone number shall be indicated clearly on the surface of the bin or container. Bins designated for Recyclable Materials shall be additionally designated with the type of material to be placed therein.

9. OBEYANCE OF LAWS.

Contractor agrees to handle and transport to its destination all collected refuse and recyclable material from industrial establishments and to perform all of the services as required by the provisions of this Agreement, in a careful manner, and in accordance with all laws, ordinances and regulations of the United States, State of California, County of Santa Clara, and City of Santa Clara.

10. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit "C", Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the performance of Franchise Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit "C".

11. ASSIGNMENT.

This Agreement shall not be sublet or assigned, wholly or in part by operation of law or otherwise, without the written approval of the City Council of City.

12. OWNERSHIP AND DISPOSAL OF INDUSTRIAL WASTE AND REFUSE.

All industrial refuse and recyclable material collected by Contractor shall become the property of Contractor immediately upon the collection thereof, and shall immediately be removed and conveyed to its destination. Nothing in this Agreement shall be construed to grant permission to Contractor to dispose of collected industrial refuse at City's designated landfill site at City's preferred disposal rate for exclusive franchise refuse. Capacity at City's designated landfill site has been arranged, but not the disposal rate. Refuse collected by Contractor shall be transported to a legally permitted materials recovery facility, or a legally permitted disposal site outside the corporate limits of City.

13. SANTA CLARA COUNTY AB 939 IMPLEMENTATION FEES.

Contractor is responsible for paying all applicable Countywide AB 939 Implementation Fees on refuse collected in City, even if the refuse is transported to a disposal facility outside of Santa Clara County where the fee is not collected at the gate.

14. TERMINATION OF AGREEMENT.

This Agreement may be terminated under the following circumstances:

a. Contractual Termination Notice

Contractor is aware of the provisions in the California Public Resources Code. Subject to the provisions of Article 3 (Section 49520 et seq.), Chapter 6, Part 8, Division 30 (Entitled "Waste Management", Section 40000 et seq.) of the California Public Resources Code, and subject to earlier termination for cause as set forth in subparagraph b, below, this Agreement shall terminate as of December 31, 2011.

b. Termination for Cause

Notwithstanding the above, if at any time, in the opinion of the City Council, Contractor has failed to adequately perform the terms of this Agreement, City shall have the right and power to terminate this Agreement for cause pursuant to the provisions of Article VI (commencing with subsection 2-73) of Chapter 2 of "The Code of the City of Santa Clara, California" and said termination shall be treated procedurally as if it were a license revocation procedure). In determination of the question whether there has been any such noncompliance with this Agreement as to warrant the termination thereof, the decision of the City Council of the City of Santa Clara shall be final and binding.

c. Contractor Termination Without Cause

Contractor may terminate this Agreement without cause by giving City written notice. Within thirty (30) calendar days of written notice, Contractor shall file a certificate, attached as Exhibit "B", and pay all outstanding Non-exclusive Franchise Fee payments as required under Section 4 herein.

15. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by City and Contractor.

16. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability or perceived disability, religion, ethnic background, or marital status, in violation of state, or federal law.

17. HOLD HARMLESS/INDEMNIFICATION.

Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, or liability of any nature, including wrongful death, caused by or arising out of Contractor's, its officers, agents or employees negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on Contractor with respect to or in any way connected with the Services performed by Contractor under this Agreement, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom.

18. SERVICE OF NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Office of the City Clerk
Attn: Richard J. Mauck,
Director of Streets and Automotive Services
1500 Warburton Avenue
Santa Clara, California 95050
Phone Number: (408) 615-2051
Or by facsimile at: (408) 244-8071

And to Contractor addressed as follows:

Pacific Coast Recycling, Inc.
Attn: Carl Salinas, President
5895 Obata Way
Gilroy, CA 95020
Phone Number: (408) 848-6811
Or by facsimile at: (408) 848-8987

19. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

20. NOTICE OF FAILURE TO PERFORM, PENALTIES AND REMEDIES.

a. Notice of Failure to Perform

In addition to any other penalties or remedies available to City or provided under this Agreement or by law, City will give written notice to Contractor for failure to perform any other services and terms of this Agreement. In the notice, City shall also identify any allowable Contractor period of compliance.

b. Remedies

Contractor shall respond to City's written notice of failure to perform and provide written notice to City, within five (5) working days, on remedies, actions, corrections, and if necessary, a schedule of compliance.

c. Penalties for Failure to Perform

Contractor, upon failure to perform the following described terms and conditions of this agreement, shall be fined through the accounts receivable or administrative citation process, the following amounts:

1. Early collection of industrial areas abutting residential areas (Section 3c.)-
\$200.00 per occurrence;

2. Failure to make Non-Exclusive Franchise Fee payment within prescribed period (Section 6) - \$50.00 per day late first three calendar days; thereafter \$100.00 per day late, or one and one-quarter (1 1/4%) percent per month or part thereof of fee due whichever is greater.
3. Failure to submit fully completed quarterly report with payment, (Section 6) - \$50.00 per day late.
4. Failure to renew insurance, and submit Certificate of Insurance prior to expiration date (Section 11) - \$100.00 per day late.
5. Failure to maintain contactor name and phone number on containers - \$100.00 per occurrence.
6. Set out and collection of refuse container (cans, carts, bins, or debris boxes) in the City of Santa Clara outside of the area permitted by this Agreement (Section 3b) - The penalties annually shall be as follows:
 - A) First Violation - \$500.00 per occurrence per collection.
 - B) Second Violation Within a One-Year Period - \$750.00 per occurrence per collection.
 - C) Third Violation Within a One-Year Period - \$1,000.00 per occurrence per collection.
 - D) Fourth Violation Within a One-Year Period - \$1,000.00 per occurrence per collection and cause for Immediate Termination (per Section 14b) of Contractor's Agreement with City.

7. Unauthorized Bins, Boxes, or Containers

The City shall notify, in writing, any Contractor who violates Section 20.c(6) that the prompt and permanent removal of such Bin, Box, or Container from the place or premises is required. The City shall deliver such written notice by posting a copy of the notice prominently upon the Bin, Box, or Container. If the Bin, Box, or Container is identified with the name and telephone number of the solid waste Contractor servicing it, as is required in Section 9, the City shall endeavor to contact the Contractor by telephone or FAX. Failure to notify the Contractor by telephone or Fax shall not make the notice invalid.

The City may impound or cause to be impounded any such Bin, Box, or Container if the item is not permanently removed from the place or premises within the time set forth in the notice, which shall be not less than twenty-four (24) hours after posting of the notice, or not less than noon of the next business day after telephone or FAX notification, if any.

Any Contractor who violates Section 21.c(6) shall be liable to the City for all fines and charges levied in connection with the collection, transportation, storage, and handling of such Bin, Box, or Container by the City. Charges for the impounding and subsequent release of any unauthorized Bin, Box, or Container shall be \$200 plus \$50 per day storage cost. The Bin, Box, or Container impounded by the City shall be retrieved by the Contractor or his or her representative immediately after all applicable fines and charges have been paid. The City Manager may delegate to an authorized contractor the authority to impound unauthorized Bins, Boxes, and Containers.

Contractor will be required to refund any and all fees paid by a customer for the placement of unauthorized Bins, Boxes, and Containers.

8. Failure of Contractor to maintain Contractor's vehicles, bins, or containers in prescribed condition (Section 8) - \$25.00 per each day late based upon an agreed compliance schedule.
9. Failure to submit, if required, annual independent certified public accountant report and opinion Contractor's records and quarterly reports were fair and accurate (Section 6) - \$50.00 per each day late first month; \$100.00 per each day late thereafter.
10. Failure to submit any required Waste Audit reports (Exhibit F) entitled "Waste Audit Reporting Requirements": \$50 per each day late first 30 days; \$100 per day 30-60 days late; \$150 per day 60-90 days late. Immediate termination of Contract if report is over 90 days late. City shall provide written notice to Contractor after each thirty (30) day late period extended beyond the due date.

21. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- a. read the attached Exhibit "D", entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- b. execute the affidavit attached as Exhibit "E", entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

22. DISPOSAL REPORTING.

Contractor's quarterly reporting to City required in Section 6 shall correspond to quantities reported as required per State of California Regulatory Code Title 14, Division 7, Article 9.2, Disposal Reporting System. Any discrepancies noted by City in writing to Contractor shall be explained and documentation provided in a timely manner. Contractor shall provide quarterly report to City of all refuse and recoverable material taken to, and City material/refuse removed from, a Transfer Station (s) or processing center (s).

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

Pacific Coast Recycling, Inc.

a California corporation

By: _____

(Signature of Person executing the Agreement on behalf of Contractor)

Name: _____

Carl Salinas

11-14-08

Title: _____

President

Local Address: _____

5895 Obata Way

Gilroy, CA 95020

Telephone: _____

(408) 848-6811

Fax: _____

(408) 848-8987

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
PACIFIC COAST RECYCLING, INC.**

"EXHIBIT "A"

**(EXAMPLE FORMAT) RECORDS OF GROSS BILLINGS
AND VOLUMES OF INDUSTRIAL REFUSE
AND RECYCLABLE MATERIALS**

- I, _____, declare:
(Name)
- A. I am the _____, of _____.
(Capacity: Treasurer, etc.) (Company Name)
- B. For the quarter ending _____,
(March, June, September or December)

The gross billings and service levels for the indicated companies were as follows:

1. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

2. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

3. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level

4. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

5. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE APPROPRIATE RECORDS AND BELIEVE THE INFORMATION TO BE TRUE, CORRECT AND COMPLETE.

Name

Title

Signature

Date

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
PACIFIC COAST RECYCLING, INC.**

"EXHIBIT "B"

**(EXAMPLE FORMAT) CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL
FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND
RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)**

MAIL TO: (Certificate and Payment)
City of Santa Clara; Accounting Services
1500 Warburton Avenue; Santa Clara, CA 95050

cc: (Certificate Only)
City of Santa Clara; Director of Streets & Auto Services
1500 Warburton Avenue; Santa Clara, CA 95050

**CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF
CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)**

Company Name: _____ Calendar Year _____
Reporting Quarter: _____

Name: _____ Title: _____ Phone: _____

PART I- REPORTING QUARTER COLLECTION SUMMARY

A. Refuse Collection (including non-source separated mixed debris containers not taken to a MRF with a recovery rate of at least 30%)

1. Refuse Collected and Taken Directly to a Landfill with no Processing:

a. Landfill used to dispose of refuse: _____

b. Number of customer accounts serviced in the City of Santa Clara: _____

c. Total quantity of refuse collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

<i>Roll-Off (Loose)</i> _____	<i>Roll-Off (Compacted)</i> _____	
<i>Quantity (c.y.)</i> _____	<i>Quantity (c.y.)</i> _____	
<i>lbs./cubic yard</i> _____	<i>lbs./cubic yard</i> _____	
<i>Weight (lbs.)</i> _____	<i>Weight (lbs.)</i> _____	

<i>Front-Loaded (Loose)</i> _____		Total Weight of _____
<i>Quantity (c.y.)</i> _____		All Refuse _____
<i>lbs./cubic yard</i> _____		lbs. _____
<i>Weight (lbs.)</i> _____		tons _____

d. Total gross billings for refuse collection service for customers
(franchise fees will be 16% of gross billings) \$ _____

2. Mixed debris taken to a Materials Recovery Facility for Processing

a. Material Recovery Facility (MRF) used: _____

b. Number of customer accounts serviced in the City of Santa Clara: _____

c. Total quantity of mixed debris collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Roll-Off (Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Total Weight of All Mixed Debris lbs. tons

d. MRF Recovery Rate: _____

e. Amount of material disposed of as refuse: _____ tons

f. Amount of material recycled: _____ tons

g. Total gross billings for all customer accounts whose waste was taken to a MRF with a recovery rate of 30% or greater (10% of gross billings) \$ _____

B. Collection of Source Separated Recyclable Materials (less than 5% contamination)

1. Number of customer accounts serviced in the City of Santa Clara: _____

2. Total quantity of recyclables collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Roll-Off (Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Total Weight of All Recyclables lbs. tons

3. Total gross billings for all customer accounts receiving collection of source separated recyclable materials (3% of gross billings) \$ _____

PART II – FRANCHISE FEE PAYMENT CALCULATION

A. _____ x 16% = \$ _____
Gross Billings Amount from I-A.1(d)

B. _____ x 10% = \$ _____
Gross Billings Amount from I-A.2(g)

C. _____ x 3% = \$ _____
Gross Billings Amount from I-B.3

D. Total Franchise Fees For Reporting Quarter: \$ _____

I declare under penalty of perjury that I have examined the appropriate records and believe the information to be true, correct, and complete; that I will maintain these records in my office for review by the City, and that I am authorized to make and submit this certificate to the City of Santa Clara.

Executed on _____

Declarant Signature: _____

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
PACIFIC COAST RECYCLING, INC.**

"EXHIBIT "C"

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of

such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request,

Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Street Department
c/o Insurance Data Services - Insurance Compliance
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543
Telephone: (951) 766-2280; or
Fax: (951) 766-2299

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA AND
PACIFIC COAST RECYCLING, INC.**

EXHIBIT "D"

***ETHICAL STANDARDS FOR CONTRACTORS
SEEKING TO ENTER INTO AN AGREEMENT WITH
THE CITY OF SANTA CLARA, CALIFORNIA
Termination of Agreement for Certain Acts***

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
 2. If fraudulent, criminal or other seriously improper conduct of any officer, director,

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. If City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to the these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files an petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
PACIFIC COAST RECYCLING, INC.**

EXHIBIT "E"

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
(CITY OF SANTA CLARA)**

I, Carl Salinas, being first duly sworn, depose and say that I am the President of Pacific Coast Recycling, Inc. and I hereby state that I have read and understand the language, titled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA" (herein "Ethical Standards") set forth in Exhibit "E". I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit "E" [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit "E" within the past five (5) years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

PACIFIC COAST RECYCLING, INC.
a Corporation

By: al [Signature]
Signature of Authorized Person or Representative

Name: Carl Salinas

Title: President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
PACIFIC COAST RECYCLING, INC.**

EXHIBIT "F"

WASTE AUDIT REPORTING REQUIREMENTS

The Waste Audit Report shall identify each customer by a customer identification (I.D.) number/letter. A matching list with the customer name and addresses must remain on file with the Contractor and available to the City upon request. The Contractor may submit a new waste audit to the City at any time, to reduce the franchise fees paid for those customers that qualify for a non-exclusive franchise fee reduction.

The Waste Audit must be performed and Certified by Statement of a qualified individual/firm experienced in the Waste Audit process. Typical qualifications of an individual or firm would be;

- ☐ Individual (s) with 4-year degree in Civil Engineering or Environmental Waste Management with experience in preparing Waste Audits would prepare and certify the report,
- ☐ Individuals with other type education and experience approved by the City, or
- ☐ Waste Audit Report prepared by a Consulting Engineering Firm experienced in preparing Waste Audits.

City shall review and determine adequacy and completeness of Waste Audit Report. Any comments will be submitted to Contractor for response, revision, update, and re-submittal of Report.

State of California

County of

Santa Clara

SS.

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], not Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

14 day of November, 2008, by
Date Month Year

(1) Carl Salinas Name of Signer

- ☐ Personally known to me
☒ Proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) (.)

(and

(2) _____ Name of Signer

- ☐ Personally known to me
☐ Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

**RIGHT THUMBPRINT
OF SIGNER #1**

Top of thumb here

**RIGHT THUMBPRINT
OF SIGNER #2**

Top of thumb here

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
QUALIFIED TRUCKING, INC.**

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR NON-EXCLUSIVE HAULING OF INDUSTRIAL
REFUSE AND RECYCLABLES
BY AND BETWEEN
CITY OF SANTA CLARA, CALIFORNIA
AND
QUALIFIED TRUCKING, INC.**

This Non-Exclusive Franchise Agreement ("Agreement") is made and entered into this 30 day of OCT 2008, 2008 ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City"), and Qualified Trucking, Inc., a California corporation, with its principal place of business located at 270 Sunol Street, San Jose, CA 95126 ("Contractor"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement".

RECITALS

Whereas:

- A. This Agreement is entered into pursuant to Ordinance 1709 of the City of Santa Clara, entitled, "An Ordinance of the City of Santa Clara, California Repealing the Existing Chapter 13, Article III of 'The Code of the City of Santa Clara, California' in its entirety and adopting a new Chapter 13, Article III Pertaining to the 'Accumulation, Transportation and Disposal of Waste Matter'" passed and finally adopted by the City Council of the City of Santa Clara, California on the 6th day of January, 1998;
- B. All the provisions of Ordinance No. 1709, and the provisions of any other applicable City ordinance, are hereby referred to and made a part of this Agreement, as if the same were herein specifically set forth. Contractor agrees to faithfully perform each and every provision, term, condition, and covenant contained in this Agreement, addition to each and every provision, term, condition, and act of said Ordinance(s);
- C. Contractor is willing, able, and competent to provide collection and hauling services for collection of recyclable materials and/or the disposal of refuse generated from industrially zoned establishments in the City of Santa Clara; and
- D. It is deemed to be to the mutual advantage of City and the Contractor to provide these services for the industrial community, and to promote the health, safety, and welfare of all City residents.

In consideration of the above recitals and the following mutual covenants, agreements and obligations of the Parties, the City, and Contractor agree as follows:

AGREEMENT PROVISIONS AGREEMENT PROVISIONS

1. DEFINITION OF TERMS.

Wherever used in this Agreement, the following terms shall have the following meanings. The singular of any definition shall include the plural and the plural shall include the singular.

a. Commercial

The term "commercial" shall mean the designated zoning for commercial, professional office (OA), or general office (OG) development as shown on the official Zoning Map of the City of Santa Clara.

b. Industrial

The term "industrial" shall mean a parcel of real property designated as being located in a industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara.

c. Industrial Refuse

The term "industrial refuse" shall mean all classes of solid wastes generated in the industrial zoning districts of City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, and including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

d. Institutional

The term "institutional" shall mean the designated zoning for public (B) or quasi-public (B) development as shown on the official Zoning Map of the City of Santa Clara.

e. Planned Development

The term "planned development" shall mean designated zoning for planned developments (PD) as shown on the official Zoning Map of the City of Santa Clara. The determination of whether specific properties with PD Zoning shall be considered industrial or other type zoning shall be determined solely by the Director of Planning and Inspection.

f. Recoverable Material

The term "recoverable material" shall mean all materials that have the potential to be recovered from garbage containers and recycled. This material shall include: wood waste, white paper, news paper, mixed paper, cardboard, green waste, concrete, and scrap metals.

g. Recyclable Material

The term "recyclable material" shall mean newspapers, cardboard, clean cans, bottles, glass, scrap metal, and high grade paper, including Recoverable Material not contaminated by garbage or other waste materials.

h. Source Separated Recyclables

The term "source separated recyclables" shall mean recyclable material that is separated by the customer and placed into containers designated for recycling specific types of recoverable materials. The containers must have less than five percent (5%) contamination to be considered source separated and qualify for the reduced franchise fee.

i. Refuse

All classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, including garbage, rubbish, and recyclable materials, and excluding hazardous wastes.

j. Material Recovery Facility (MRF)

The term "material recovery facility" shall mean a facility that processes refuse or mixed debris for the purpose of removing recoverable materials for recycling.

k. Residential

The term "residential" shall mean the designated zoning for residential (R) development as shown on the official Zoning Map of the City of Santa Clara, or other property used for residential purposes, regardless of its zoning designation.

l. Quarter

The term "quarter" shall mean a three (3) month period, or portion thereof, ending the last day of the following months: March, June, September, and December.

m. Waste Audit

The term "waste audit" shall mean Contractor periodically supplied certified report of amounts of recoverable material and garbage for specific customers which may be required by the City per terms and conditions described herein.

2. TERM OF AGREEMENT.

Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date and terminate at the end of day on December 31, 2011.

3. CONTRACTOR'S OBLIGATIONS AND HOURS OF OPERATION.

a. Obligation

City hereby grants to Contractor a nonexclusive right to provide the services required, and to furnish whatever labor, equipment, materials, and supplies which may be necessary, for the

purpose of collecting and picking up recyclable materials and industrial refuse, and to remove and transport said material to its destination from industrial zones in the City of Santa Clara for a period of time commencing on the Effective Date, subject to the termination provisions in Paragraph 13. Contractor agrees, in accordance with the covenants and agreements contained in this Agreement, to provide said services.

b. Restrictions

Contractor shall not charge for the collection and disposal of refuse or recyclables in commercial, institutional, and residential zoned property in the City unless authorized by separate franchise agreement with the City. Contractor may collect from these areas recoverable and recyclable material at no charge or fee to customer, including any hauling, bin rental, equipment rental, management, or similar service charge or fees. Any recoverable and recyclable material setout for collection must be setout in separately marked containers, and not contaminated by garbage.

c. Building Construction Exception

Exceptions in commercial, institutional, and residential zoned properties will be allowed for Contractor who has declared to City their primary business activity is building construction, and/or building demolition. Contractor must provide City with documentation that demonstrates that construction site clean-up services are being performed, with the cost of debris hauling and recycling itemized out for reporting purposes. In order to qualify for this exception, the construction contractor must utilize its own personnel to load the recoverable material into containers. This exemption does not apply for refuse. Contractor is required to report the amount of recyclable materials collected and pay franchise fees on the debris hauling/recycling portion of the charge to the customer.

d. Hours of Operation

All collections shall be made as quietly as possible, without unnecessary noise, disturbance, or commotion. Collections from any premises shall not be made prior to 4:00 a.m., and for areas that abut residential areas, collections shall not commence prior to 7:00 a.m.

4. NON-EXCLUSIVE FRANCHISE FEE PAYMENTS TO CITY.

Contractor shall pay to City a franchise fee ("Non-exclusive Franchise Fee") for the privilege of engaging in the business of collecting, hauling, and transporting recyclable material and industrial refuse to its destination. This Non-exclusive Franchise Fee shall be sixteen percent (16%) of the total gross billings for refuse that is not processed through a material recovery facility (MRF) that diverts at least thirty percent (30%), or source separated recyclable containers that have contamination levels greater than five percent (5%); ten percent (10%) of the total gross billings for refuse that is taken to a MRF that diverts at least thirty percent (30%); and three percent (3%) of the total gross billings for service of source separated recyclables with a contamination rate of less than five percent (5%). Bin and equipment rental charges are to be included in the gross billings for each industrial customer.

5. QUARTERLY AND ANNUAL REPORTING TO CITY.

Contractor shall file with the City's Director of Finance and forward a copy to the City's Director of Streets and Automotive Services, for each quarter's reporting period (or portion thereof), a written statement certifying the total gross billings for refuse and recycling issued during the period and total number of customers for which such statement is rendered and filed. Said statement shall be due within thirty (30) calendar days following the end of each quarter. Each statement shall be executed and submitted on a report form included herein as Exhibit "B" entitled "CERTIFICATE OF GROSS BILLINGS NON EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA, CALIFORNIA)".

Each certifying written statement filed with the City's Director of Finance shall be accompanied by the Non-exclusive Franchise Fee payment equal to the appropriate percentage of the gross billings certified. Non-exclusive Franchise Fee payments shall be delinquent on the thirty-first (31st) calendar day following the completion of the reporting period. Delinquent Non-exclusive Franchise Fee payments shall bear interest, commencing from the date of delinquency, at the rate of one and one quarter percent (1.25%) per month, or part thereof, simple interest in addition to penalties described in Section 21, herein. Failure to report and/or pay in a timely manner for more than one quarter, or failure to pay constitutes cause for termination of this Agreement per terms of Section 15b, of this Agreement.

A Contractor with a total reportable gross billings in excess of one hundred thousand (\$100,000) dollars per year shall submit annually, a report and an opinion by an independent certified public accountant that the Contractor's records were examined and the quarterly reports were a fair and accurate representation of the gross billings and Non-exclusive Franchise Fees owed the City. Said report shall be filed within one hundred (100) days after the end of the Contractor's fiscal year.

A Contractor providing recycling services without charge or compensation or for which customers are paid for materials must submit a quarterly report as described in Exhibit "B", listing the volume or tons diverted from customers within the City and certifying that no revenues were collected for recycling service or bin rental.

6. RECORDS.

Contractor shall keep and maintain full and complete records in Contractor's local office showing all City industrial refuse hauling and recyclable material collection business transacted. Such records shall be available in Contractor's offices for audit and inspection at any and all reasonable times upon request or demand of the City Manager or her/his designee. The records shall be maintained on the form entitled "RECORDS OF GROSS BILLINGS AND VOLUMES OF INDUSTRIAL REFUSE AND RECYCLABLE MATERIALS" and attached as Exhibit "A". A similar accounting format which provides the same type of information and summaries may be used if approved by the City Manager or her/his designee. The records must be kept on file for a period of three (3) years following the expiration or termination of this Agreement.

Failure to maintain adequate records and keep them on file for a period of three (3) years

following expiration or termination of this Agreement, whichever occurs first, shall be cause for the City to conduct, or hire an independent accounting firm to conduct, an extensive audit of Contractor's available records and Contractor's industrial customers' records to determine if additional Non-exclusive Franchise Fee payments are due to City. The costs of this audit shall be borne by Contractor. Prior to conducting this audit, City shall give Contractor written notice of deficiencies in record keeping and Contractor shall have thirty (30) calendar days to cure the default.

If the default is not cured within the time allotted, City shall have the right to conduct said audit and the cost of said audit, including additional Non-exclusive Franchise Fee payments plus interest at the rate of one and one quarter percent (1.25%) per month simple interest, shall be paid to City by Contractor within fifteen (15) days of receipt of audit report and billing by Contractor. Failure to maintain adequate records as required constitutes cause for termination of this Agreement, per terms of Section 15b, of this Agreement.

7. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that at all times herein mentioned, Contractor shall be deemed to be an independent contractor and that all work done hereunder shall be done and performed to the satisfaction of the City Manager who shall from time to time have the right, as circumstances require, to issue reasonable orders, directions, and instructions to Contractor having for their purpose the attainment of the results herein sought to be accomplished; provided however, that the means whereby such results are to be accomplished shall at all times be under the control of Contractor.

It is further agreed that neither Contractor, nor employee(s) of Contractor shall be deemed to be an agent or employee of City. Contractor, its agents and servants shall not hold themselves out to be the agents or employees of City in any manner whatsoever. It is further provided that Contractor shall not use the firm name containing the words "City" or "Santa Clara" or other words implying municipal ownership without approval of City Council of City.

8. COLLECTION EQUIPMENT - DESCRIPTION AND MARKING.

Contractor undertakes and agrees to carry out and perform the obligations of this Agreement in a sanitary, good, and workmanlike manner. All industrial refuse, and recyclable material collected by Contractor shall be transported in modern collection equipment, so constructed and so loaded that there will not be any leakage or dropping of industrial refuse or recyclable material therefrom. Said industrial refuse, when placed in any such vehicle and during its passage to its destination, shall be suitably enclosed so as to prevent spillage. Collection vehicles shall be uniformly painted and numbered, and shall have Contractor's name and the vehicle number painted in contrasting colors on each side and on the rear of the vehicle. Contractor's colors and color patterns on vehicles and bins shall be approved by City and be sufficiently different to be distinguishable from other non-exclusive franchise industrial refuse and recycling collection contractors. Collection vehicles shall be repainted at least once every forty-two (42) months, with touch-ups in the interim as required for aesthetics.

Contractor may furnish City-approved, detachable metal bins or containers to customers. In such event, Contractor shall be responsible for the general repair and upkeep of the bins or containers. Contractor shall repair, repaint or touch-up such bins or containers as required, but not less than

once every two years, and shall maintain such bins or containers in a sanitary non-leaking condition. Contractor's firm name and telephone number shall be indicated clearly on the surface of the bin or container. Bins designated for Recyclable Materials shall be additionally designated with the type of material to be placed therein.

9. OBEYANCE OF LAWS.

Contractor agrees to handle and transport to its destination all collected refuse and recyclable material from industrial establishments and to perform all of the services as required by the provisions of this Agreement, in a careful manner, and in accordance with all laws, ordinances and regulations of the United States, State of California, County of Santa Clara, and City of Santa Clara.

10. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit "C", Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the performance of Franchise Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit "C".

11. ASSIGNMENT.

This Agreement shall not be sublet or assigned, wholly or in part by operation of law or otherwise, without the written approval of the City Council of City.

12. OWNERSHIP AND DISPOSAL OF INDUSTRIAL WASTE AND REFUSE.

All industrial refuse and recyclable material collected by Contractor shall become the property of Contractor immediately upon the collection thereof, and shall immediately be removed and conveyed to its destination. Nothing in this Agreement shall be construed to grant permission to Contractor to dispose of collected industrial refuse at City's designated landfill site at City's preferred disposal rate for exclusive franchise refuse. Capacity at City's designated landfill site has been arranged, but not the disposal rate. Refuse collected by Contractor shall be transported to a legally permitted materials recovery facility, or a legally permitted disposal site outside the corporate limits of City.

13. SANTA CLARA COUNTY AB 939 IMPLEMENTATION FEES.

Contractor is responsible for paying all applicable Countywide AB 939 Implementation Fees on refuse collected in City, even if the refuse is transported to a disposal facility outside of Santa Clara County where the fee is not collected at the gate.

14. TERMINATION OF AGREEMENT.

This Agreement may be terminated under the following circumstances:

a. Contractual Termination Notice

Contractor is aware of the provisions in the California Public Resources Code. Subject to the provisions of Article 3 (Section 49520 et seq.), Chapter 6, Part 8, Division 30 (Entitled "Waste Management", Section 40000 et seq.) of the California Public Resources Code, and subject to earlier termination for cause as set forth in subparagraph b, below, this Agreement shall terminate as of December 31, 2011.

b. Termination for Cause

Notwithstanding the above, if at any time, in the opinion of the City Council, Contractor has failed to adequately perform the terms of this Agreement, City shall have the right and power to terminate this Agreement for cause pursuant to the provisions of Article VI (commencing with subsection 2-73) of Chapter 2 of "The Code of the City of Santa Clara, California" and said termination shall be treated procedurally as if it were a license revocation procedure). In determination of the question whether there has been any such noncompliance with this Agreement as to warrant the termination thereof, the decision of the City Council of the City of Santa Clara shall be final and binding.

c. Contractor Termination Without Cause

Contractor may terminate this Agreement without cause by giving City written notice. Within thirty (30) calendar days of written notice, Contractor shall file a certificate, attached as Exhibit "B", and pay all outstanding Non-exclusive Franchise Fee payments as required under Section 4 herein.

15. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by City and Contractor.

16. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability or perceived disability, religion, ethnic background, or marital status, in violation of state or federal law.

17. HOLD HARMLESS/INDEMNIFICATION.

Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, or liability of any nature, including wrongful death, caused by or arising out of Contractor's, its officers, agents or employees negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on Contractor with respect to or in any way connected with the Services performed by Contractor under this Agreement, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom.

18. SERVICE OF NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Office of the City Clerk
Attn: Richard J. Mauck,
Director of Streets and Automotive Services
1500 Warburton Avenue
Santa Clara, California 95050
Phone Number: (408) 615-2051
Or by facsimile at: (408) 244-8071

And to Contractor addressed as follows:

Qualified Trucking
Attn: Emiliano Gomez, President
270 Sunol Street
San Jose, CA 95126
Phone Number: (408) 279-0600
or by facsimile at (408) 998-1400

19. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

20. NOTICE OF FAILURE TO PERFORM, PENALTIES AND REMEDIES.

a. Notice of Failure to Perform

In addition to any other penalties or remedies available to City or provided under this Agreement or by law, City will give written notice to Contractor for failure to perform any other services and terms of this Agreement. In the notice, City shall also identify any allowable Contractor period of compliance.

b. Remedies

Contractor shall respond to City's written notice of failure to perform and provide written notice to City, within five (5) working days, on remedies, actions, corrections, and if necessary, a schedule of compliance.

c. Penalties for Failure to Perform

Contractor, upon failure to perform the following described terms and conditions of this agreement, shall be fined through the accounts receivable or administrative citation process, the following amounts:

1. Early collection of industrial areas abutting residential areas (Section 3c.)-
\$200.00 per occurrence;

2. Failure to make Non-Exclusive Franchise Fee payment within prescribed period (Section 6) - \$50.00 per day late first three calendar days; thereafter \$100.00 per day late, or one and one-quarter (1 1/4%) percent per month or part thereof of fee due whichever is greater.
3. Failure to submit fully completed quarterly report with payment, (Section 6) - \$50.00 per day late.
4. Failure to renew insurance, and submit Certificate of Insurance prior to expiration date (Section 11) - \$100.00 per day late.
5. Failure to maintain contactor name and phone number on containers - \$100.00 per occurrence.
6. Set out and collection of refuse container (cans, carts, bins, or debris boxes) in the City of Santa Clara outside of the area permitted by this Agreement (Section 3b) - The penalties annually shall be as follows;
 - A) First Violation - \$500.00 per occurrence per collection.
 - B) Second Violation Within a One-Year Period - \$750.00 per occurrence per collection.
 - C) Third Violation Within a One-Year Period - \$1,000.00 per occurrence per collection.
 - D) Fourth Violation Within a One-Year Period - \$1,000.00 per occurrence per collection and cause for Immediate Termination (per Section 14b) of Contractor's Agreement with City.

7. Unauthorized Bins, Boxes, or Containers

The City shall notify, in writing, any Contractor who violates Section 20.c(6) that the prompt and permanent removal of such Bin, Box, or Container from the place or premises is required. The City shall deliver such written notice by posting a copy of the notice prominently upon the Bin, Box, or Container. If the Bin, Box, or Container is identified with the name and telephone number of the solid waste Contractor servicing it, as is required in Section 9, the City shall endeavor to contact the Contractor by telephone or FAX. Failure to notify the Contractor by telephone or Fax shall not make the notice invalid.

The City may impound or cause to be impounded any such Bin, Box, or Container if the item is not permanently removed from the place or premises within the time set forth in the notice, which shall be not less than twenty-four (24) hours after posting of the notice, or not less than noon of the next business day after telephone or FAX notification, if any.

Any Contractor who violates Section 21.c(6) shall be liable to the City for all fines and charges levied in connection with the collection, transportation, storage, and handling of such Bin, Box, or Container by the City. Charges for the impounding and subsequent release of any unauthorized Bin, Box, or Container shall be \$200 plus \$50 per day storage cost. The Bin, Box, or Container impounded by the City shall be retrieved by the Contractor or his or her representative immediately after all applicable fines and charges have been paid. The City Manager may delegate to an authorized contractor the authority to impound unauthorized Bins, Boxes, and Containers.

Contractor will be required to refund any and all fees paid by a customer for the placement of unauthorized Bins, Boxes, and Containers.

8. Failure of Contractor to maintain Contractor's vehicles, bins, or containers in prescribed condition (Section 8) - \$25.00 per each day late based upon an agreed compliance schedule.
9. Failure to submit, if required, annual independent certified public accountant report and opinion Contractor's records and quarterly reports were fair and accurate (Section 6) - \$50.00 per each day late first month; \$100.00 per each day late thereafter.
10. Failure to submit any required Waste Audit reports (Exhibit F) entitled "Waste Audit Reporting Requirements": \$50 per each day late first 30 days; \$100 per day 30-60 days late; \$150 per day 60-90 days late. Immediate termination of Contract if report is over 90 days late. City shall provide written notice to Contractor after each thirty (30) day late period extended beyond the due date.

21. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

- a. read the attached Exhibit "D", entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- b. execute the affidavit attached as Exhibit "E", entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

22. DISPOSAL REPORTING.

Contractor's quarterly reporting to City required in Section 6 shall correspond to quantities reported as required per State of California Regulatory Code Title 14, Division 7, Article 9.2, Disposal Reporting System. Any discrepancies noted by City in writing to Contractor shall be explained and documentation provided in a timely manner. Contractor shall provide quarterly report to City of all refuse and recoverable material taken to, and City material/refuse removed from, a Transfer Station (s) or processing center (s).

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

QUALIFIED TRUCKING, INC.

A California corporation

By: Emiliano Gomez
(Signature of Person executing the Agreement on behalf of Contractor)
Name: Emiliano Gomez
Title: President
Local Address: 270 Smol St
San Jose, CA 95126
Telephone: (408) 279-0600
Fax: (408) 998-1400

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
QUALIFIED TRUCKING, INC.**

"EXHIBIT "A"

**(EXAMPLE FORMAT) RECORDS OF GROSS BILLINGS
AND VOLUMES OF INDUSTRIAL REFUSE
AND RECYCLABLE MATERIALS**

I, _____, declare:
(Name)

A. I am the _____, of _____.
(Capacity: Treasurer, etc.) (Company Name)

B. For the quarter ending _____,
(March, June, September or December)

The gross billings and service levels for the indicated companies were as follows:

1. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

2. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

3. Name:
Billing Address:
Collection Address:
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

4. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

5. Name:
Billing Address:
Collection Address
(if different):
Gross Billings for Refuse:
Gross Billings for Recycling:
Weekly Refuse Service Level:
Weekly Recycling Service Level:

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE APPROPRIATE RECORDS AND BELIEVE THE INFORMATION TO BE TRUE, CORRECT AND COMPLETE.

Name

Title

Signature

Date

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
QUALIFIED TRUCKING, INC.**

“EXHIBIT “B”

**(EXAMPLE FORMAT) CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE
INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF CUSTOMERS, VOLUME
COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF
SANTA CLARA)**

MAIL TO: (Certificate and Payment)
City of Santa Clara; Accounting Services
1500 Warburton Avenue; Santa Clara, CA 95050

cc: (Certificate Only)
City of Santa Clara; Director of Streets & Auto Services
1500 Warburton Avenue; Santa Clara, CA 95050

CERTIFICATE OF GROSS BILLINGS NON-EXCLUSIVE INDUSTRIAL FRANCHISE FEE PAYMENT, NUMBER OF
CUSTOMERS, VOLUME COLLECTED, AND RECYCLING/RESOURCE RECOVERY QUANTITIES (CITY OF SANTA CLARA)

Company Name: _____ Calendar Year _____
Reporting Quarter: _____

Name: _____ Title: _____ Phone: _____

PART I- REPORTING QUARTER COLLECTION SUMMARY

A. Refuse Collection (including non-source separated mixed debris containers not taken to a MRF with a recovery rate of at least 30%)

1. Refuse Collected and Taken Directly to a Landfill with no Processing:

- a. Landfill used to dispose of refuse: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of refuse collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Roll-Off
(Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded
(Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Total Weight of _____
All Refuse lbs. tons

- d. **Total gross billings for refuse collection service for customers**
(franchise fees will be 16% of gross billings) \$ _____

2. Mixed debris taken to a Materials Recovery Facility for Processing

- a. Material Recovery Facility (MRF) used: _____
- b. Number of customer accounts serviced in the City of Santa Clara: _____
- c. Total quantity of mixed debris collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Roll-Off (Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Total Weight of All Mixed Debris lbs. tons

d. MRF Recovery Rate: _____

e. Amount of material disposed of as refuse: _____ tons

f. Amount of material recycled: _____ tons

g. Total gross billings for all customer accounts whose waste was taken to a MRF with a recovery rate of 30% or greater (10% of gross billings) \$ _____

B. Collection of Source Separated Recyclable Materials (less than 5% contamination)

1. Number of customer accounts serviced in the City of Santa Clara: _____

2. Total quantity of recyclables collected: _____ tons

Data must be converted to tons. Indicate the amount of material collected during the reporting period for the following types of containers:

Roll-Off (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Roll-Off (Compacted) Quantity (c.y.) lbs./cubic yard Weight (lbs.)

Front-Loaded (Loose) Quantity (c.y.) lbs./cubic yard Weight (lbs.) Total Weight of All Recyclables lbs. tons

3. Total gross billings for all customer accounts receiving collection of source separated recyclable materials (3% of gross billings) \$ _____

PART II – FRANCHISE FEE PAYMENT CALCULATION

A. _____ x 16% = \$ _____
Gross Billings Amount from I-A.1(d)

B. _____ x 10% = \$ _____
Gross Billings Amount from I-A.2(g)

C. _____ x 3% = \$ _____
Gross Billings Amount from I-B.3

D. Total Franchise Fees For Reporting Quarter: \$ _____

I declare under penalty of perjury that I have examined the appropriate records and believe the information to be true, correct, and complete; that I will maintain these records in my office for review by the City, and that I am authorized to make and submit this certificate to the City of Santa Clara.

Executed on _____

Declarant Signature: _____

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
QUALIFIED TRUCKING, INC.**

“EXHIBIT “C”

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a “pay on behalf” basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of

such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request,

Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Street Department

c/o Insurance Data Services - Insurance Compliance

P.O. 12010-S2

or

151 North Lyon Avenue

Hemet, CA 92546-8010

Hemet, CA 92543

Telephone: (951) 766-2280; or

Fax: (951) 766-2299

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

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**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA AND
QUALIFIED TRUCKING, INC.**

EXHIBIT "D"

***ETHICAL STANDARDS FOR CONTRACTORS
SEEKING TO ENTER INTO AN AGREEMENT WITH
THE CITY OF SANTA CLARA, CALIFORNIA
Termination of Agreement for Certain Acts***

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor¹ does any of the following:

- a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
- b. Is convicted of a crime punishable as a felony involving dishonesty³;
- c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
- d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director,

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation) and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. If City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to the these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files an petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
QUALIFIED TRUCKING, INC.**

EXHIBIT "E"

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
(CITY OF SANTA CLARA)**

I, Emiliano Gomez, being first duly sworn, depose and say that I am the President of Qualified Trucking, Inc. and I hereby state that I have read and understand the language, titled "*ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*" (herein "Ethical Standards") set forth in Exhibit "E". I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit "E" [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit "E" within the past five (5) years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

QUALIFIED TRUCKING, INC.
a Corporation

By: Emiliano Gomez
Signature of Authorized Person or Representative

Name: Emiliano Gomez

Title: President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR HAULING INDUSTRIAL REFUSE
BY AND BETWEEN
CITY OF SANTA CLARA
AND
QUALIFIED TRUCKING, INC.**

EXHIBIT "F"

WASTE AUDIT REPORTING REQUIREMENTS

The Waste Audit Report shall identify each customer by a customer identification (I.D.) number/letter. A matching list with the customer name and addresses must remain on file with the Contractor and available to the City upon request. The Contractor may submit a new waste audit to the City at any time, to reduce the franchise fees paid for those customers that qualify for a non-exclusive franchise fee reduction.

The Waste Audit must be performed and Certified by Statement of a qualified individual/firm experienced in the Waste Audit process. Typical qualifications of an individual or firm would be;

- ☐ Individual (s) with 4-year degree in Civil Engineering or Environmental Waste Management with experience in preparing Waste Audits would prepare and certify the report,
- ☐ Individuals with other type education and experience approved by the City, or
- ☐ Waste Audit Report prepared by a Consulting Engineering Firm experienced in preparing Waste Audits.

City shall review and determine adequacy and completeness of Waste Audit Report. Any comments will be submitted to Contractor for response, revision, update, and re-submittal of Report.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California

County of SANTA CLARA } ss.

☒ See Attached Document (Notary to cross out lines 1-6 below)

☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this

30 day of OCT, 2008, by
Date Month Year

(1) Emiliano Gomez
Name of Signer

☐ Personally known to me

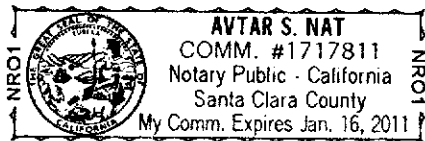
☒ Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(and

(2) _____
Name of Signer

☐ Personally known to me

☐ Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)



Avatar S. Nat
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document:

non-Exclusive Franchise agreement

Document Date: 10/30/08 Exhibit E Number of Pages: ONE

Signer(s) Other Than Named Above:

EMILIANO GOMEZ

**RIGHT THUMBPRINT
OF SIGNER #1**

Top of thumb here

**RIGHT THUMBPRINT
OF SIGNER #2**

Top of thumb here